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≡ HEARING
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STATE OF CALIFORNIA



STATE CAPITOL
ROOM 113
SACRAMENTO, CALIFORNIA

MONDAY, JUNE 8, 1998
1:35 P.M.

1 SENATE RULES COMMITTEE

2 STATE OF CALIFORNIA

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7 HEARING

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10 STATE CAPITOL

11 ROOM 113

12 SACRAMENTO, CALIFORNIA

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16 MONDAY, JUNE 8, 1998

17 1:35 P.M.

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25 Reported by

26
27 Evelyn J. Mizak
28 Shorthand Reporter

APPEARANCESMEMBERS PRESENT

SENATOR JOHN BURTON, Chair

SENATOR JOHN LEWIS, Vice Chair

SENATOR RUBEN AYALA

SENATOR TERESA HUGHES

SENATOR WILLIAM KNIGHT

STAFF PRESENT

GREG SCHMIDT, Executive Officer

PAT WEBB, Committee Secretary

NANCY MICHEL, Consultant on Governor's Appointments

WADE TEASDALE, Consultant to SENATOR LEWIS

FELICE TANENBAUM, Consultant to SENATOR HUGHES

ANDY PUGNO, Consultant to SENATOR KNIGHT

ALSO PRESENT

MEGAN M. KEPHART, Member
State Board of Education

ROGER A. KOZBERG, Member
California Transportation Commission

DANA W. REED, Member
California Transportation Commission

GARY PATTON
Planning and Conservation League

ED GERBER
California Transit Association

INDEXPage

Proceedings 1

Governor's Appointees:

MEGAN M. KEPHART, Member
State Board of Education 1

Questions by SENATOR HUGHES re:

Things Learned While on Board 1

Ability to Contribute 2

Questions by SENATOR AYALA re:

Selection of Student Member on
State Board 2

Motion to Confirm 2

Committee Action 3

ROGER A. KOZBERG, Member
California Transportation Commission 3

Questions by SENATOR HUGHES re:

Ways to Make Commission More Effective
in Solving Transportation Problems 4

Questions by SENATOR LEWIS re:

Adoption of New STIP 4

Highlights of STIP 5

Questions by SENATOR AYALA re:

Possible Move to Use Gasoline Tax Money
to Fund Rail Transportation 6

Possibility of Building Additional Lanes
above Existing Freeways 7

Motion to Confirm 7

Committee Action 8

1		
2	DANA W. REED, Member	
3	California Transportation Commission	8
4	Background and Experience	8
5	Questions by CHAIRMAN BURTON re:	
6	Familiarity with Highway 101 Corridor	
7	between Marin and Sonoma	9
8	Possible Solution to Over Congestion	
9	on 101 Corridor	9
10	Alleged Long Standing Opposition to	
11	General Purpose Road Development	11
12	Questions by SENATOR KNIGHT re:	
13	Concern with Two-lane Highways	
14	in High Desert Areas with Large	
15	Population Growth	11
16	Plans to Improve the Two-lane Highways	12
17	Need to Improve Highway 138	13
18	Questions by SENATOR HUGHES re:	
19	High Cal Trans Administrative Costs	14
20	CTC's Responsibility regarding Efficient	
21	Operation of Department of Transportation	15
22	Questions by SENATOR LEWIS re:	
23	Studies on Efficacy of HOV Lanes in	
24	Orange County	16
25	Statements by CHAIRMAN BURTON re:	
26	Mixed Flow HOV Lanes in Bay Area	16
27	Motion to Confirm	17
28	<u>Witnesses in Support:</u>	
	GARY PATTON	
	Planning and Conservation League	17
	Questions by SENATOR AYALA re:	
	League's Opposition to Makeup of	
	Metropolitan Water District	18

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Reason for PCL's Involvement in MWD	18
PCL's Sudden Interest in Ethnic Background	19
ED GERBER California Transit Association	19
Motion to Confirm	20
Withdrawal of Prior Motion	20
Committee Action	20
Termination of Proceedings	20
Certificate of Reporter	21

P-R-O-C-E-E-D-I-N-G-S

--ooOoo--

CHAIRMAN BURTON: Megan Kephart.

MS. KEPHART: I am currently serving as the student member on the State Board of Education. My term ends in July.

I'm happy to answer any of your questions.

CHAIRMAN BURTON: It ends in July?

MS. KEPHART: July 31st, the end of July is when I'm done.

CHAIRMAN BURTON: Questions, Members of the Committee?

SENATOR HUGHES: Question.

CHAIRMAN BURTON: Senator Hughes.

SENATOR HUGHES: What have you learned from being on the Board?

MS. KEPHART: Oh, wow.

SENATOR HUGHES: What did you learn, and did you learn what you expected to learn, or did you learn even more?

MS. KEPHART: Well, I wasn't really sure -- I didn't really think about too much what I was going to learn because I knew I was going to learn so much it wasn't even going to be fathomable.

So, I learned an incredible amount about the education system itself. My first meeting I had some trouble with lingo that was being used. Some of the language was a little difficult for me, some things I didn't understand. So,

1 members helped me out with that, and it's just gotten easier
2 with every meeting, more than I could ever have hoped for.

3 SENATOR HUGHES: What do you think you
4 contributed, or do you think you were allowed to contribute
5 anything?

6 MS. KEPHART: I was definitely allowed to
7 contribute my opinions. And I serve as the only student member,
8 so of course, I contributed about student position.

9 Usually, I agreed with most of the Board members,
10 so there wasn't a lot of controversy.

11 SENATOR HUGHES: Very bad.

12 Thank you.

13 CHAIRMAN BURTON: Any other questions, Members of
14 the Committee?

15 SENATOR AYALA: How are the students selected for
16 that Board? It's statewide?

17 MS. KEPHART: I applied at the beginning of my
18 junior year. Then the applications were dwindled to a number of
19 twelve, and those twelve students were sent to a student
20 conference held by cast. And the delegates at that conference
21 chose six of us to be interviewed by an ad hoc committee of the
22 State Board of Education.

23 SENATOR AYALA: Statewide.

24 MS. KEPHART: Then we were appointed by the
25 Governor.

26 SENATOR AYALA: Quite an honor.

27 CHAIRMAN BURTON: Moved by Senator Lewis.

28 SENATOR LEWIS: Move.

1 CHAIRMAN BURTON: Call the roll.

2 SECRETARY WEBB: Senator Ayala.

3 SENATOR AYALA: Aye.

4 SECRETARY WEBB: Ayala Aye.

5 SECRETARY WEBB: Senator Hughes.

6 SENATOR HUGHES: Aye.

7 SECRETARY WEBB: Hughes Aye. Senator Knight.

8 SENATOR KNIGHT: Aye.

9 SECRETARY WEBB: Knight Aye. Senator Lewis.

10 SENATOR LEWIS: Aye.

11 SECRETARY WEBB: Lewis Aye. Senator Burton.

12 CHAIRMAN BURTON: Aye.

13 SECRETARY WEBB: Burton Aye. Five to zero.

14 CHAIRMAN BURTON: Congratulations.

15 MR. KEPHART: Thank you.

16 CHAIRMAN BURTON: Roger Kozberg, California
17 Transportation Commission, replacing Jerry Epstein.

18 MR. KOZBERG: Good afternoon, Senators.

19 I am Roger Kozberg. The Governor appointed me to
20 the California Transportation Commission in August.

21 I'm pleased to be here, and I'm pleased to answer
22 your questions.

23 CHAIRMAN BURTON: Questions, Members of the
24 Committee?

25 SENATOR HUGHES: I'll ask a question if nobody
26 else wants to.

27 CHAIRMAN BURTON: Senator Hughes.

28 SENATOR HUGHES: Mr. Kozberg, how effective do

1 you think the Transportation Commission is? And what do you
2 think we need to do to make it more effective to solve our
3 transportation problems?

4 MR. KOZBERG: Well, breaking that into digestible
5 bites, I think that in my almost nine months now on the
6 Transportation Commission, I have been incredibly impressed with
7 its ability to deal with some very complex new legislation. I
8 think that their ability to deal with SB 45 and the tremendous
9 changes it's made have been nothing short of remarkable. I
10 think that's not just a function of the Transportation
11 Commission. I think there was a lot of help from Cal Trans, and
12 from the CTC staff, and from all of the various regions.

13 I think there is a tremendous sensitivity,
14 awareness, and a feeling of responsibility on the part of the
15 Commission of its responsibilities both to the Legislature and
16 to the Governor and to the people of California for maintaining
17 not only the highway system, but all the other modes of
18 transportation.

19 I wish I was smart enough to answer the rest of
20 your question, but I'm sure going to work hard. If we can find
21 a way to be more effective, we'll do that. I think perhaps we
22 can be a little more user friendly in the future, and that's
23 going to be one of my priorities.

24 SENATOR HUGHES: Thank you.

25 CHAIRMAN BURTON: Senator Lewis.

26 SENATOR LEWIS: Mr. Kozberg, you recently adopted
27 the STIP?

28 MR. KOZBERG: That's correct, at our June

1 meeting.

2 SENATOR LEWIS: Can you give us some of the
3 highlights? Is there any particular new direction you're
4 heading in?

5 CHAIRMAN BURTON: Statewide or Orange County
6 local?

7 SENATOR LEWIS: The most important first,
8 statewide.

9 MR. KOZBERG: Our authority under the STIP, our
10 authority for the STIP has changed drastically under SB 45. We
11 no longer have an item by item authority. Rather, we can either
12 approve or disapprove each of the RTIPs.

13 I think that we were very effective in helping
14 some of the regions better understand the state's overall
15 priorities, and I think that some very effective changes were
16 made.

17 The intent, as I understand it from Senator Kopp
18 and others who were heavily involved in SB 45, was to make the
19 regions more responsible for, and obviously more accountable,
20 for their shares.

21 I think that the very cooperative effort under
22 the interregional program, I think we tried to work very hard,
23 and staff tried to work very hard with the regions to leverage
24 local funding, and ITIP and STIP funding where we could.

25 I think the overall STIP adoption was about as
26 good as it could have happened, particularly given the very
27 short time between the passage of SB 45 and our need to adopt
28 the STIP in June.

1 CHAIRMAN BURTON: Other Members? Senator Ayala.

2 SENATOR AYALA: Question. Is there a move afoot
3 to use sales tax money for rail transportation? Gasoline tax
4 for rail?

5 MR. KOZBERG: Gasoline tax or sales tax?

6 SENATOR AYALA: Gasoline tax to be used in the
7 rail systems for transportation purposes.

8 MR. KOZBERG: Well, there are several sales tax
9 measures.

10 SENATOR AYALA: I'm talking about the gasoline
11 sales tax.

12 MR. KOZBERG: Gasoline taxes, as they flow back
13 to the regions, I think a lot of those are used in rail. There
14 are certain percentages that are required for public transit
15 within SB 45, but I think that's all pretty well mandated.

16 SENATOR AYALA: But the gasoline tax is generated
17 from those who use the streets and the freeways, not rail
18 service.

19 Why would you use sales tax for rail service?
20 Let the railroad people come up with a sales tax of their own.

21 There was a move afoot a while back to do that.

22 MR. KOZBERG: Just from a philosophical
23 standpoint, I guess that every bit of merchandise, and every
24 person who moves by rail improves for others the use of the
25 highways. As we take people off the highways --

26 SENATOR AYALA: But the gasoline tax is a user's
27 tax, which should be used for highways, and freeways, and things
28 of that nature. It's a user tax. The railroads don't use sales

1 tax for that purpose. I just wondered why they would do that.

2 Another question I have, there's some talk that
3 it would be a good idea to build above existing freeways another
4 layer of pavement up there, so that you have the right of way
5 already. You don't have to purchase additional right of way.
6 Use existing freeways with another layer up above to avoid the
7 traffic jams we're experiencing in San Francisco, Los Angeles,
8 San Diego, San Jose, all those big cities.

9 Any critics to that?

10 MR. KOZBERG: I think it's terrific if it can be
11 done from an engineering standpoint. Many areas, I know that
12 there's some serious seismic problems in the width of some of
13 those freeways. Makes it difficult to build structures above
14 them.

15 SENATOR AYALA: You still wouldn't have to buy
16 additional right of ways. It's already there. You just go
17 another layer on it, like you do with the San Francisco Bay
18 Bridge.

19 MR. KOZBERG: I'd be -- under or over it, if we
20 could do it.

21 SENATOR AYALA: Thank you.

22 CHAIRMAN BURTON: Any other questions.

23 Any support? Any opposition?

24 SENATOR HUGHES: Move it.

25 CHAIRMAN BURTON: Pleasure of Committee, moved by
26 Senator Hughes.

27 Call the roll.

28 SECRETARY WEBB: Senator Ayala.

1 SENATOR AYALA: Aye.

2 SECRETARY WEBB: Ayala Aye.

3 SECRETARY WEBB: Senator Hughes.

4 SENATOR HUGHES: Aye.

5 SECRETARY WEBB: Hughes Aye. Senator Knight.

6 SENATOR KNIGHT: Aye.

7 SECRETARY WEBB: Knight Aye. Senator Lewis.

8 SENATOR LEWIS: Aye.

9 SECRETARY WEBB: Lewis Aye. Senator Burton.

10 CHAIRMAN BURTON: Aye.

11 SECRETARY WEBB: Burton Aye. Five to zero.

12 CHAIRMAN BURTON: Congratulations.

13 MR. KOZBERG: Thank you, Senators.

14 CHAIRMAN BURTON: Dana Reed, California

15 Transportation Commission, replacing Peter Inman.

16 MR. REED: Thank you, Mr. Chairman and Senators.

17 I am Dana Reed.

18 I have been involved in transportation most of my
19 adult life, beginning in 1967 when I was appointed by then
20 Governor Reagan as Executive Officer of the California Toll
21 Bridge Authority. I then was appointed by Governor Deukmejian
22 as Under Secretary of Business, Transportation and Housing, when
23 Kirk West was the Secretary of Business, Transportation and
24 Housing.

25 I then went back to Southern California, where I
26 served on the Orange County Transportation Commission, now known
27 as the Orange County Transportation Authority. I was one of the
28 founding directors and Vice Chairman of Southern California

1 Regional Rail Authority, which is more commonly known as Metro
2 Link.

3 And I was honored by Governor Wilson last summer
4 to be appointed to the California Transportation Commission.

5 My passion, if you will, is public
6 transportation, although I fully understand and recognize that
7 the majority of Californians get to and from work by use of
8 their private automobile. And the STIP which we adopted last
9 week is overwhelmingly improvements on the state highway
10 system.

11 But notwithstanding that, I consider myself to be
12 a supporter of Metro Link, and of Cal Train, and other mass
13 transportation projects where appropriate, and certainly bus
14 transportation and where that's a more cost effective means of
15 getting our citizens to work and home at night, as opposed to
16 rail whenever it's more cost effective to use buses.

17 CHAIRMAN BURTON: Are you familiar with what they
18 call the 101 Corridor going up north from Marin into Sonoma?

19 MR. REED: Yes, sir, I am. You're talking about
20 the rail corridor?

21 CHAIRMAN BURTON: No, I'm just talking about the
22 whole thing, where, starting around right as you get out of
23 Novato until you get almost into Santa Rosa, it's just --

24 MR. REED: Yes, sir.

25 CHAIRMAN BURTON: What do you think a solution to
26 that is?

27 MR. REED: As the Senator wrote to us earlier and
28 asked us to take good, hard look at that, especially adding an

1 additional lane in each direction, I believe it was a High
2 Occupancy Vehicle lane, I'm not certain, but I know that that
3 was a recommendation that we made to Cal Trans, that that be
4 included in their ITIP. As a result of the Commission's
5 recommendation, it was added to the ITIP and approved at the
6 last meeting.

7 I don't think that's the total solution. I think
8 that obviously it's a first step forward, but these corridors,
9 getting people to work in the morning and home at night is, in
10 my opinion, the most important thing that all of us in
11 transportation, whether it be Cal Trans or the Commission, ought
12 to be most concerned about.

13 CHAIRMAN BURTON: It seemed to me, and I
14 mentioned this to Senator Thompson, that driving, if you go up
15 there -- and this is of absolutely no interest to anyone else on
16 the Committee but me -- if you tried to go over to the outside,
17 you'd run into probably severe environmental study slow downs.
18 There seems to be, in many portions of it, room for another lane
19 on the inside, where I think the only environmental concerns
20 would be, I guess, cumulative impact of cars because there's
21 nothing there but gravel and shoulders.

22 At some point, I think there'd be ways there to
23 alleviate the traffic.

24 I remember driving when I first came to
25 Sacramento, before I-80 was really built, you'd have two lanes,
26 and then it would open to the freeway, so you'd get logged. But
27 then it would bus through. There, there's almost no busing
28 through until you get past Santa Rosa.

1 Why would somebody consider that you have a long
2 standing outspoken opposition to general purpose road
3 development that stands in the way of transportation fair
4 dealing?

5 MR. REED: I can't imagine why they would say
6 that.

7 CHAIRMAN BURTON: Maybe you could tell me what
8 general purpose road development is?

9 MR. REED: Perhaps they mean mixed flow lanes, as
10 opposed to, say, High Occupancy Vehicles.

11 I've been told earlier that Drivers for Highway
12 Safety, if that's from that group, I'm not sure, that's an
13 organization from Orange County --

14 CHAIRMAN BURTON: Enough said.

15 MR. REED: -- that came to most of our commission
16 meetings when I was on the Orange County Transportation
17 Commission.

18 Generally speaking, they are opposed. I don't
19 mean to speak for them, because perhaps they're in the audience,
20 but generally speaking, they are opposed to using tax revenues
21 for public transit of any kind.

22 CHAIRMAN BURTON: Senator Knight.

23 SENATOR KNIGHT: I'm not familiar with what
24 happened in the latest STIP, but I am concerned about some of
25 the two-lane highways in the high desert area where we have
26 effected tremendous growth over the last ten years. And we
27 still have two-lane highways that are now accepting capacities
28 that should be associated with four-lane interstates.

1 MR. REED: Yes, sir.

2 SENATOR KNIGHT: 138, which they call Blood
3 Alley, there have been 63 deaths in the last five years on that
4 highway. And we forecast the number of deaths every year. It
5 bears it out. It's a highway that is totally over capacity.

6 126 is another one, going into Ventura. 395
7 going north to Mammoth.

8 What are the plans for those areas?

9 I know that 138, there was -- and it probably
10 still is on the Master Plan -- the Metropolitan Bypass, which
11 was an interstate between 15 and 5 to route people around the
12 metropolitan area going south. Whether that'll come to pass or
13 not, I don't know, but certainly 138 is becoming a metropolitan
14 bypass with two lanes.

15 MR. REED: Senator, basically under SB 45, which
16 was adopted and signed by the Governor last year, there's
17 basically two ways to get a particular project improved.

18 One is through the regional plan, which is 75
19 percent of the total money is allocated to the regions, and they
20 make the decision themselves on a local level.

21 The remaining 25 percent remains with Cal Trans,
22 the ITIP, the interregional program.

23 A very, very large percentage of that 25 percent
24 goes to a nonurban areas, and a substantial portion of that this
25 year was in the high desert and the areas around of which you
26 speak. I don't know exactly the numbers, but I know that
27 Highway 58 was dramatically improved, as was Highway 15, which I
28 believe is in Senator Ayala's district, not yours.

1 SENATOR KNIGHT: No, it's the intersection at
2 Barstow, I think, that you're talking about.

3 MR. REED: From Victorville to Barstow was
4 increased in both directions.

5 As I say, a very substantial portion of the ITIP
6 was for nonurbanized areas, such as you've suggested.

7 Whether those particular highways were in the
8 project or not, I'm not sure.

9 SENATOR KNIGHT: I guess I'm more concerned,
10 you've got an interstate 15. We're improving that, but yet,
11 we're allowing Highway 138 to continue to kill people just
12 because we can't add passing lanes, turn-out lanes, improve the
13 washout areas, level it, do whatever we can to make it safer.

14 I don't see the improvements there that are going
15 to satisfy that problem.

16 MR. REED: Highway safety has always been and
17 must continue to be our number one issue. To the extent that
18 additional lanes or passing lanes, or whatever, are necessary,
19 that certainly is something I would be very supportive of.

20 As far as 395 is concerned, it's interesting you
21 should mention that because we had one non-unanimous vote, and
22 it was on that issue of 395.

23 I agree with you that more money, especially in
24 the Mammoth area that you've mentioned, I believe that that road
25 should be improved, as opposed to other uses of the money that
26 were suggested.

27 SENATOR KNIGHT: For example, on Highway 15, we
28 put in the center barriers all the way from Victorville to

1 Barstow, I think, which was in response to the number of
2 accidents of trucks and cars crossing the barrier and hitting
3 head-on in the other direction. And we've kind of satisfied
4 that problem.

5 I still don't see that we've done anything on
6 138. That's a big concern in the district, a tremendous
7 concern.

8 MR. REED: I'm sure it is a concern, and it's
9 something that Cal Trans ought to, perhaps, come over and talk
10 to you about.

11 SENATOR KNIGHT: The commuters are increasing
12 daily.

13 CHAIRMAN BURTON: Senator Hughes then Senator
14 Lewis.

15 SENATOR HUGHES: I understand there was a recent
16 study done to cost out all the 50 states. It said that CTC was
17 a first in transportation administrative costs.

18 How do you account for that? Why are your
19 administrative costs so high? Were you aware of that?

20 MR. REED: No, Senator, I was not aware of that.
21 We have a very small staff.

22 SENATOR HUGHES: It's the Department of
23 Transportation.

24 MR. REED: Cal Trans.

25 SENATOR HUGHES: Yes.

26 MR. REED: I wouldn't be able to answer that,
27 Senator, I'm sorry.

28 SENATOR HUGHES: Do you think that CTC has any

1 responsibility in regard to the efficient operation of this
2 department? Because you're going to take the blame for whatever
3 they do inefficiently.

4 I perhaps should have asked Mr. Kozberg this,
5 too. I'm glad he's still sitting here, so that when you go back
6 and you meet again, I think you need to ask for some
7 accountability in terms of what they are doing.

8 MR. REED: I agree with you completely, Senator.
9 We as a whole -- perhaps I shouldn't speak for my other
10 Commissioners -- but I know that we are very concerned about Cal
11 Trans' ability to deliver the projects that we voted on last
12 week.

13 It is something that I know the Commission as
14 whole, and I certainly would participate fully in this, is to
15 monitor Cal Trans on a monthly basis at every meeting, work with
16 Cal Trans to plot their ability to deliver the projects that we
17 voted last week.

18 SENATOR HUGHES: I think that you should keep in
19 mind that 15 percent of administrative overhead certainly sounds
20 excessive. If you pound away at that, I think you should look
21 at what we're getting for that high overhead.

22 MR. REED: Thank you, Senator.

23 SENATOR HUGHES: Thank you.

24 CHAIRMAN BURTON: Senator Lewis.

25 SENATOR LEWIS: Mr. Reed, as long as I have you
26 in the hot seat for a moment, I wanted to ask with regard to the
27 HOV lanes that we do have in Orange County.

28 What kind of studies do you have that indicate

1 that they are, overall, a net positive in regard to reducing
2 transportation commutes? If you look at the 55 from the 91
3 heading south towards John Wayne, for example, oftentimes in the
4 morning you'll see the HOV lane is moving very, very quickly,
5 and everybody else is stuck in traffic.

6 My question is, if that was a free flowing lane,
7 what effect would it have on the other lanes?

8 MR. REED: Senator, I do not have any such
9 studies. I have read of studies that indicate that the HOV
10 lanes are not as effective as perhaps they might -- or not as
11 effective as they had been billed to be.

12 I personally am not aware of any studies that Cal
13 Trans or any other entity has done as to the effectiveness;
14 however, it is clearly something that should be done, should be
15 reviewed on a regular basis.

16 I was not aware until just recently, when I was
17 driving from San Francisco to Sacramento, I was not aware that
18 in the Bay Area, HOV lanes are open to mixed flow except during
19 commuting hours. That's something that clearly could be looked
20 at and should be looked at in other areas of the state.

21 CHAIRMAN BURTON: They have one that we're going
22 to change. Basically the HOV have been mixed flow except for
23 the commute hour, three to seven, whatever it is. Then, as part
24 of a deal they cut with Berkeley over some overpass or sky pass,
25 I don't know what, they now have HOV from seven in the morning
26 till seven at night.

27 As someone who travels during the off hours,
28 there's nobody using them most of the time. We have requested a

1 study of, and I don't know whether it's the Commission, Cal
2 Trans, somebody, to try to get that down to six months, because
3 that's observed more in the breach by people just driving their
4 cars, because there's no one in the lane.

5 I'm counter commute, so I go back to the city.
6 There's nobody there because, you know, they're in the car pool
7 lane going the other way.

8 To me, I don't know about the second part of your
9 statement, but that one was one of the dumbest things I've ever
10 seen, not to have mixed use when the commute's over, because
11 they're damn near empty.

12 Any more questions? Pleasure of the Committee?

13 SENATOR KNIGHT: Move it.

14 CHAIRMAN BURTON: Any opposition, support?

15 MR. PATTON: Mr. Chairman, I'm Gary Patton for
16 the Planning Conservation League.

17 Sorry, I was at another hearing and missed the
18 start of Mr. Reed's presentation and confirmation hearing.

19 PCL has been pleased with his advocacy in
20 appropriate cases, we believe, for rail and public transit on
21 the Commission. We wanted to say a supportive word.

22 We maybe make it difficult for Senator Lewis. I
23 don't know. I hope not.

24 But actually, Dana told me to come and say
25 something nice about him, and I hope he doesn't bear any ill
26 consequences.

27 SENATOR AYALA: I have a question for the
28 gentleman.

1 I have a letter from your organization protesting
2 make up of the Metropolitan Water District because of lack of
3 minority members.

4 Have you seen the list here of this group?

5 MR. PATTON: I have not reviewed it in
6 connection with this hearing, but I would bet that MWD is
7 better. I wouldn't doubt that.

8 SENATOR AYALA: You didn't answer my question.

9 Have you seen this list here, and why are you
10 involved? Is that under your bylaws, you get involved with
11 something that none of your business or what? I'm serious about
12 that.

13 MR. PATTON: I understand that, Senator.

14 Generally, PCL follows bills. We decide which
15 ones seem to be of highest priorities.

16 With respect to your bill, which we did comment
17 on, people from PCL in Southern California asked us to take the
18 position we took.

19 We had, in other words, constituents who were
20 concerned about the change in the composition that your bill
21 would make in the Metropolitan Water District.

22 SENATOR AYALA: But not in this case?

23 MR. PATTON: In this case we did not look at that
24 issue in connection with this appointment. It was a personal
25 comment that's being made essentially about the personal
26 qualifications and the conduct of Mr. Reed.

27 SENATOR AYALA: Your organization is involved
28 with the environment.

1 MR. PATTON: We are.

2 SENATOR AYALA: I don't understand this interest
3 in ethnic background all of a sudden.

4 Do your bylaws call for that?

5 MR. PATTON: No.

6 SENATOR AYALA: Then why do you get involved with
7 something that's not your business?

8 MR. PATTON: Well, because our members want us
9 to.

10 SENATOR AYALA: I have no more questions

11 MR. PATTON: Thank you.

12 CHAIRMAN BURTON: One more and you're out the
13 door.

14 [Laughter.]

15 CHAIRMAN BURTON: What have you got to say,
16 Gerber?

17 MR. GERBER: Ed Gerber with the California
18 Transit Association.

19 Just two things. For years I've worked with
20 Dana, and I'm really impressed with his attempt to get the
21 information to make decisions. When he first was appointed, he
22 called up and said, can I come meet with you and find out what
23 your issues are, so the opportunity to have the door open.

24 Secondly, in the area of mass transportation, he
25 has been very helpful in having us be part of the modal package
26 that moved everybody to work every day.

27 Therefore, we endorse his nomination.

28 SENATOR LEWIS: Mr. Chairman, I would be honored

1 to nominate my former primary opponent.

2 CHAIRMAN BURTON: From the Flournoy wing of the
3 party.

4 SENATOR KNIGHT: I remove my motion. Senator
5 Lewis is so adamant.

6 CHAIRMAN BURTON: What was the vote differential?

7 SENATOR LEWIS: It was nip and tuck.

8 MR. REED: Until they started counting.

9 [Laughter.]

10 CHAIRMAN BURTON: Call the roll.

11 SECRETARY WEBB: Senator Ayala.

12 SENATOR AYALA: Aye.

13 SECRETARY WEBB: Ayala Aye.

14 SECRETARY WEBB: Senator Hughes.

15 SENATOR HUGHES: Aye.

16 SECRETARY WEBB: Hughes Aye. Senator Knight.

17 SENATOR KNIGHT: Aye.

18 SECRETARY WEBB: Knight Aye. Senator Lewis.

19 SENATOR LEWIS: Aye.

20 SECRETARY WEBB: Lewis Aye. Senator Burton.

21 CHAIRMAN BURTON: Aye.

22 SECRETARY WEBB: Burton Aye. Five to zero.

23 CHAIRMAN BURTON: Thank you. Congratulations.

24 MR. REED: Thank you very much.

25 [Thereupon this portion of the

26 Senate Rules Committee hearing was

27 terminated at approximately 2:28 P.M.]

28 --ooOoo--

CERTIFICATE OF SHORTHAND REPORTER


I, EVELYN J. MIZAK, a Shorthand Reporter of the State of California, do hereby certify:

That I am a disinterested person herein; that the foregoing transcript of the Senate Rules Committee hearing was reported verbatim in shorthand by me, Evelyn J. Mizak, and thereafter transcribed into typewriting.

I further certify that I am not of counsel or attorney for any of the parties to said hearing, nor in any way interested in the outcome of said hearing.

IN WITNESS WHEREOF, I have hereunto set my hand this

9th day of June, 1998.


EVELYN J. MIZAK
Shorthand Reporter

357-R

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1:36 P.M.

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17 1:36 P.M.

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27 Evelyn J. Mizak
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APPEARANCES

MEMBERS PRESENT

SENATOR JOHN BURTON, Chair

SENATOR JOHN LEWIS, Vice Chair

SENATOR RUBEN AYALA

SENATOR TERESA HUGHES

SENATOR WILLIAM KNIGHT

STAFF PRESENT

GREG SCHMIDT, Executive Officer

PAT WEBB, Committee Secretary

NANCY MICHEL, Consultant on Governor's Appointments

WADE TEASDALE, Consultant to SENATOR LEWIS

FELICE TANENBAUM, Consultant to SENATOR HUGHES

JOSH LOWERY, Consultant to SENATOR KNIGHT

ALSO PRESENT

WILLIAM J. POPEJOY, Director
California State Lottery

SHERRIE GOLDEN
California State Employees Association

JERRY WAYNE, Lottery Employee
California State Employees Association

JOAN BRYANT, Bargaining Services Manager
California State Employees Association

INDEXPage

Proceedings 1

Governor's Appointees:

WILLIAM J. POPEJOY, Director
California State Lottery 1

Background and Experience 1

Questions by CHAIRMAN BURTON re:

Layoffs before New Jobs Were
Available to Affected Employees 2

Opinion on Raising Age Limit on
Buying Lottery Tickets 3

Worry of Indians that Lottery Might
Use Parimutuel Slot Machine Type Games 4

Odds of Winning Super Lotto 5

Misleading Advertisements 5

Giving Players Information on
Gamblers Anonymous 6

Possibility of Amending Act for More
Legislative and Executive Oversight 6

After Layoffs, Lottery Will Have Fewer
Employees than Florida Lottery 7

Method Used in Determining Cutbacks
in Personnel 7

Possibility of Revisiting, Terminating or
Renegotiating and Rebidding Contracts 8

Questions by SENATOR LEWIS re:

Three-year Business Plan for Lottery 9

Approaches to Increase Lottery Sales 10

Objection to Lottery Advertisements 11

Questions by SENATOR HUGHES re:

Early Retirement Plan Offered to Laid Off Employees	12
Designation of People to Be Laid Off	13
Number of Laid Off Employees with Prior State Service	13
New Choice of Options in Super Lotto Payout	14
Vendors' Knowledge of Options	15
Commitment that Lottery Will Make Positive Efforts to Help Education	17

Questions by SENATOR AYALA re:

Evidence that Lottery Will Operate Efficiently after Layoffs	18
Prior Need for So Many Extra Employees	19

Questions by SENATOR LEWIS re:

Financial Rewards to Vendors	21
Ranking of California's Lottery vs. Other States	21

Questions by CHAIRMAN BURTON re:

Number of Employees Irrelevant to Sale of Tickets	22
Vendor's Cut on Winning Ticket	22
Money Saved by Laying Off Employees in Last Six Month	23
Cash Option vs. Annuity Option	24
Advertisements Mention only Annuity Amount of Winning	25
Misleading Billboard Ads	26

Questions by SENATOR LEWIS re:

Billboard Advertisements	29
--------------------------------	----

Questions by SENATOR AYALA re:

Possibility of Privatizing Lottery	29
---	----

Witness in Opposition:

SHERRIE GOLDEN California State Employees Association	29
JERRY WAYNE, Lottery Employee California State Employees Association	30

Questions by CHAIRMAN BURTON re:

Reason for Refusal of CSEA's Public Records Request	33
Benefits of Working with Union	34
Early Retirement Option	34

JOAN BRYANT, Bargaining Services Manager California State Employees Association	36
--	----

Questions by SENATOR AYALA re:

Balancing Lottery's Budget through Rank and File Employees	37
---	----

Questions by CHAIRMAN BURTON re:

Concern that Top Administration Not Getting Timely Information	38
Request for Breakdown of Supervisors vs. Nonsupervisors Affected by Layoffs	40
Large Number of Layoffs in Sales Force	41

Questions by SENATOR LEWIS of Union re:

Lottery Employees' Membership in PERS	43
Percentage of Lottery Employees with Prior State Service	43
Response by MR. POPEJOY	43
Number of Laid Off Employees Not Benefitted by Early Retirement Option	44

Questions by SENATOR KNIGHT re:

Significant Sales Force After Layoffs	45
Response by MR. WAYNE	45
Layoffs the Result of Evaluation of Management Structure	47
Body Layoffs vs. Position Layoffs	47
Motion to Confirm	48
Committee Action	48
Termination of Proceedings	49
Certificate of Reporter	50

P-R-O-C-E-E-D-I-N-G-S

--ooOoo--

CHAIRMAN BURTON: Item three, William Popejoy.

MR. POPEJOY: I'm Bill Popejoy, Chairman Burton, and I'm here to seek confirmation as the Director of the California State Lottery.

I've been on the job about one year, or it will be a year as of May the 5th, and I came to the Lottery at a time when there was a great deal of proposed legislation to make it more efficient, to lower its operating ratio.

I asked some of the people in this room for a chance to let us do it on our own, with our own business plan, in a more humane way, hopefully in a way that would make Legislators who proposed the legislation to cut back the Lottery, hopefully happy. And they gave us a chance.

So June of last year, we put in place a business plan, a three-year business plan that set the Lottery on course to, I think, a rather substantial improvement. The most important part of that plan would end up at the end of year three, which is two years from now, with a quarter of a billion dollars more per year for education. That's the object of this whole plan, to make more money for education.

Along the way, in our effort to be more efficient, we certainly have changed some people's lives, caused some disruption, caused some pain, and I'm aware of that and sensitive to it. The Lottery's reduction in force, which I hope can be completely absorbed elsewhere in state government, we're working towards doing just that, that is our number one

1 objective.

2 CHAIRMAN BURTON: Do you lay them off before
3 they've got a job, or do you lay them off and hope they find a
4 job?

5 MR. POPEJOY: We notify them about four months
6 before the actual layoff. We work with them to get them placed
7 elsewhere in government.

8 CHAIRMAN BURTON: Do you work with the
9 administration?

10 MR. POPEJOY: We work with DPA, with the
11 individual departments, and other parts of the administration
12 that have openings.

13 Mr. Chairman, it's a pro-active program. We have
14 a whole list of things that we communicate to our employees to
15 tell them what we're doing.

16 CHAIRMAN BURTON: How many of the laid off people
17 have gotten jobs versus have not gotten jobs?

18 MR. POPEJOY: So far, it's too early in the
19 process, so very few have gotten jobs and none have been laid
20 off. There won't be any layoff effective until the end of June,
21 so we're still placing a number of employees along the way.

22 We're also able to get -- I think it's the only
23 time it's been done; if not, it's one of the few times -- an
24 early retirement program for the people in the Lottery to help
25 take the sting out of lay offs. So, some people can opt
26 towards -- for early retirement, and hopefully save the jobs of
27 others.

28 At the end of this reduction in force, I think

1 it's important to note that we will still have more employees
2 than any other lottery in the nation. In fact, more employees
3 than the largest lottery in the world. So, it's not a matter
4 that we're really going below the level that's necessary to
5 staff the Lottery.

6 I've enjoyed my time at the Lottery. It's nice
7 to be part of something that really you can really look back and
8 say maybe you made a difference. But my time, hopefully, isn't
9 over because my job isn't done.

10 Those are the end of my remarks.

11 CHAIRMAN BURTON: What do you think about raising
12 the age for Lottery tickets? I'm kind of surprised that 18 year
13 olds can buy Lottery tickets, to tell you the truth.

14 MR. POPEJOY: That was part of the initiative,
15 Senator Burton, when the Lottery was formed back in 1984. I
16 don't know what the rationale was at that time.

17 I haven't given much thought to increasing the
18 age. I'm not so sure that I'd be in favor of that, not to
19 increase the population of people who are potential players of
20 the Lottery. We're not interested -- I'm not interested in
21 making the Lottery intrusive into the lives of Californians.
22 I'd like for it to be pretty much on the edges.

23 But if you can ask an 18 year old to go war, I
24 suppose you can allow them to play the Lottery.

25 CHAIRMAN BURTON: You can't allow them to have a
26 bottle of beer.

27 MR. POPEJOY: You can allow them to buy
28 cigarettes.

1 CHAIRMAN BURTON: You can't allow them to have a
2 bottle of beer.

3 MR. POPEJOY: Well, I think since I like beer
4 very much, they should wait about three more years for beer.

5 CHAIRMAN BURTON: What's your answer to my
6 question? You have no opinion?

7 MR. POPEJOY: I have an opinion. I think that 18
8 years is fine.

9 CHAIRMAN BURTON: There is a concern expressed,
10 and maybe I'll get somebody from my office to come down, but
11 when I met with a group of Indians, they were concerned that the
12 Lottery might be hooking up the same type of games that were
13 video games.

14 Do you have any idea what I'm talking about?
15 You're nodding your head; I hope you do.

16 MR. POPEJOY: I think I do. There has been some
17 concern raised about whether or not a parimutuel slot machine
18 type game, which I believe is allowed for the Indians within the
19 recently negotiated compact, is something that the Lottery would
20 be interested in pursuing.

21 I can only speak for myself, and we would not.
22 We're not interested in pursuing using that type of game within
23 our operation.

24 CHAIRMAN BURTON: We're not interested in having
25 it pursued either.

26 This is like a Ken Maddy question, but the
27 Lottery ads kind of lead people to believe that they've got a
28 better shot at winning than they really do. Do you think that's

1 not necessarily misleading advertising? I guess it is
2 misleading maybe with a small "m."

3 MR. POPEJOY: Well, if it's misleading, we should
4 correct the ads. We're not interested in misleading the public.
5 We print on the tickets their odds of winning.

6 CHAIRMAN BURTON: I'm talking about the t.v. and
7 that stuff. You know, when people buy the ticket, they've
8 bought the ticket.

9 MR. POPEJOY: Okay. Well, I don't know what you
10 or Senator Maddy is referring to, which ads. The ads that we
11 publish have to meet the truth in lending requirements, even
12 though we're not subject to the truth in lending requirements.
13 We're awfully careful not to be misleading, and still, it's our
14 job to try and sell tickets. So, any thoughts you may have on
15 how that process can be improved, we're certainly willing and
16 interested in hearing.

17 I'd be disappointed if it was a common perception
18 that we were misleading people with our ads, because that's not
19 something we should be doing.

20 CHAIRMAN BURTON: I don't think people really
21 think that the odds are one in eighteen million to win the Super
22 Lotto jackpot. I mean, I don't know if you want to say that's
23 the odds or not, but I don't think that's it.

24 Do you think it would be beneficial, or that the
25 Lottery, either with their ads or maybe on the tickets and web
26 site, to inform people, for the want of a better word, about
27 Gamblers Anonymous?

28 MR. POPEJOY: That's something that we've already

1 started, and not as a result of any legislation. It's been
2 proposed a couple times. I think last time it was in SB 8, and
3 then for some reason it fell out; we didn't fight it.

4 But we have voluntarily put in a program, a
5 gamble responsibly program, play responsibly program, with an
6 800 number to call, and with brochures and referrals for people
7 who have a problem with gambling. We're very sensitive to not
8 be a contributor to compulsive gambling.

9 CHAIRMAN BURTON: The LAO has recommended that
10 the Act might be amended for more legislative and executive
11 branch oversight of the administrative budget.

12 Do you care to comment on that? Are you familiar
13 with her recommendations?

14 MR. POPEJOY: No, I'm not.

15 CHAIRMAN BURTON: Basically she recommended that
16 we amend the Act to provide for a little bit more legislative
17 oversight, I think, and fiscal, which I would probably interpret
18 to mean maybe whether that would be subject to the Budget Act or
19 not, I'm not sure.

20 All we can do is talk to you like this. Once
21 you're confirmed, or once somebody else is appointed, and while
22 they're acting or not confirmed, that's the last we can do about
23 anything.

24 MR. POPEJOY: Well, I can't, Senator Burton,
25 speak for other Lottery Directors, but whatever happens today, I
26 think that it's still necessary for the Director to be
27 responsive to the concerns of the Legislators. And if they are
28 not, or if I am not, then there will be legislation that

1 requires you do so.

2 I don't think an operation like ours, that's as
3 large as ours, as somewhat controversial as ours, even though I
4 hope we can keep the controversy to a minimum, should shy away
5 from oversight.

6 Oversight doesn't bother me. Oversight usually
7 increases credibility and believability. So, if more oversight
8 was sought, I wouldn't be worried about that.

9 CHAIRMAN BURTON: If you have the 215 layoffs
10 that are proposed, you'll then be down below Florida.

11 MR. POPEJOY: I'm not sure that's true.

12 CHAIRMAN BURTON: I'm not sure either, but page
13 18 in the document says it's true.

14 MR. POPEJOY: I don't have page 18.

15 CHAIRMAN BURTON: I'll give it to you. Trust me,
16 it's there.

17 So, the question would be, Florida, with half the
18 population, would have more Lottery employees than us.

19 How did you determine the cutbacks in Lottery
20 employees? That was a result of us telling you to cut down on
21 your administrative costs?

22 MR. POPEJOY: Well, certainly that was a
23 motivating factor, but the number that we came to was a result
24 of looking at every operation of the Lottery, going back to a
25 much over used term, zero based accounting, and just basically
26 restaffing a hypothetical Lottery as if it was new today to do
27 the job that should be done, which would have resulted in many
28 fewer employees than we ended up with after the 215 reduction.

1 I believe that even after the 215 reduction,
2 which I believe takes us about 640, that's about 200 employees
3 more than New York, which is the largest lottery in the nation
4 by two times our volume.

5 And I'm a little surprised even at the Florida
6 numbers. My understanding, we're still ahead of Florida, but if
7 we're not, fine.

8 What we're trying to do is make the Lottery as
9 efficient as possible and to create more income for education.

10 CHAIRMAN BURTON: One last one for a minute.

11 There's been some concern about some of the
12 contracts that were entered into prior to your stewardship. Can
13 those contracts either be revisited, terminated for cause if
14 there's a cause, or certainly not renewed?

15 MR. POPEJOY: Well, any contract can be
16 revisited. Whether or not you're on legal ground to terminate
17 the contract without suffering considerable monetary damage is a
18 separate question.

19 All of our contracts have a for cause
20 termination. The question is, do we have cause to make a
21 termination.

22 There were some controversial contracts entered
23 into before I came aboard. I'm not interested in trying to sit
24 in judgment of those. I will comply with the contracts, and
25 when they come up, we will renegotiate.

26 I think the controversial nature of the
27 contracts --

28 CHAIRMAN BURTON: Renegotiate or rebid?

1 MR. POPEJOY: No, if I'm here which, I probably
2 won't be, because the major one that comes up is in 2003.

3 CHAIRMAN BURTON: How long were the contracts'
4 duration? What is the normal duration?

5 MR. POPEJOY: I believe that contract was the
6 high side GTECH contract, was entered into early in 1997, and so
7 it goes for about six years.

8 But the last part of your question as I
9 understood it, would we renegotiate or rebid, I would hope that
10 they would rebid. I think major contracts should be bid.

11 CHAIRMAN BURTON: Any other Members of the
12 Committee. Senator Lewis, then Senator Hughes.

13 SENATOR LEWIS: Mr. Popejoy, first of all,
14 looking at this same chart that Senator Burton referenced, I
15 also see that if these layoffs take place, that the California
16 Lottery would still employ more people than New York,
17 Washington, and Arizona combined. I guess it's just a question
18 of what part of the chart you want to look at.

19 I wanted to ask you about your three-year
20 business plan. I think you said that at conclusion of three
21 years, your goal was to have \$250 million more available for
22 public education?

23 MR. POPEJOY: That's correct.

24 SENATOR LEWIS: And the cut for public education,
25 is that a third, as I recall?

26 MR. POPEJOY: Thirty-four percent at the very
27 minimum, plus unclaimed prizes and interest. So, it really runs
28 up to about 36 percent.

1 SENATOR LEWIS: So, roughly your ticket sales
2 would have to go up \$750 million a year?

3 MR. POPEJOY: That's right; that's correct

4 SENATOR LEWIS: To spur that kind of additional
5 ticket buying, I guess there's several different ways you can do
6 it. You can introduce new games. You can advertise more, or
7 perhaps you can increase the size of your jackpots, which might
8 lure more people.

9 Which of those approaches does your plan
10 emphasize?

11 MR. POPEJOY: All of them, Senator Lewis, but
12 with particular reliance upon increasing the size of the
13 jackpots. There's no secret on how you get more participation,
14 and that is to give the people who play it a greater chance to
15 win.

16 California is right at the bottom of the list of
17 pay outs to players. It's one of the worse deals in the nation.
18 We're trying make that deal better.

19 And it is hard sometimes to persuade Legislators,
20 because they deal with percentages, and what we're trying to
21 talk about here is, if the percentage goes up and up and up for
22 education, but the pot goes down and down and down, education's
23 the loser. We think education can be the winner if the
24 percentage can be more modest, but more money goes into prizes,
25 creating more volume. And the result is a lot more money for
26 education.

27 And with our plan, and it's a plan that's
28 one-third along the way now, and it's ahead of schedule,

1 basically we're calling for better service to retailers. We're
2 calling for more efficient operations so we give a better
3 service to our customer. But more importantly, and most
4 importantly, we give a better deal to the player, a better
5 chance to win.

6 SENATOR LEWIS: I think I mentioned this to you
7 previously. I have a bit of a bias. I was not a supporter of
8 the concept of creating a State Lottery.

9 But having said that, you know, as long as
10 there's going to be one, it should be officially run; however,
11 Senator Burton, I think, touched on one of my concerns, and that
12 is those t.v. commercials. I think there's something kind of
13 lurid to have the imprimatur of the state urging people, buy
14 lottery tickets because you could end up living in this
15 luxurious lifestyle, when in fact the odds are one in eighteen
16 million, apparently.

17 So, I would hope that in your strategies in the
18 future, you might rely on other things, other than giving the
19 imprimatur of state once again in terms of --

20 MR. POPEJOY: We will be sensitive to that,
21 Senator Lewis.

22 For your information, we've already cut our
23 advertising budget quite substantially. It went from 54 million
24 to 40 million. Now it's at 29 million.

25 CHAIRMAN BURTON: We're talking content, not
26 number of ads.

27 MR. POPEJOY: Pardon me?

28 CHAIRMAN BURTON: We're talking content of the

1 ad, not the number of the ads.

2 MR. POPEJOY: Okay, fine. I understand.

3 SENATOR LEWIS: Thank you.

4 CHAIRMAN BURTON: Senator Hughes.

5 SENATOR HUGHES: Mr. Popejoy, could you explain
6 to me what the early retirement plan that you have for the
7 employees is.

8 MR. POPEJOY: What we have right now --

9 SENATOR HUGHES: What kinds of choices they have,
10 if any?

11 MR. POPEJOY: Yes, Senator Hughes.

12 The plan basically moved forward your time in
13 service by two years. It doesn't move forward your age, but it
14 moves forward your time in service by two years.

15 So, if you were two years from retirement now,
16 you can take early retirement. And if you were one year, then
17 you'd be over a year, and you'd have a little more lucrative
18 retirement. So, basically what it does is advance your time in
19 service, state service, by two years.

20 That affects a number of our employees,
21 particularly with the Lottery, because the Lottery was formed
22 about 13 years ago, and many of our employees have eight, nine
23 years of service. So, they're within striking distance of early
24 retirement should they choose that route, and we understand a
25 number of them will.

26 SENATOR HUGHES: There are about 215 people whom
27 you will be encouraging to retire, or 215 people that you would
28 be laying off?

1 MR. POPEJOY: The reduction of force will be 215,
2 Senator Hughes. My understanding is that about 15 percent of
3 our workforce is eligible -- no, almost 20 percent of our
4 workforce would be eligible under the early retirement program.

5 Whether or not they would choose -- it's strictly
6 voluntary -- for early retirement remains to be seen. I
7 wouldn't want to leave the Committee with the feeling that if
8 everyone chose early retirement, we wouldn't have a layoff,
9 because that isn't so. All it will do is take some of the bite
10 out of the layoff.

11 We have to work real hard, and we are working
12 hard at getting employees placed elsewhere in state government
13 if they wish.

14 SENATOR HUGHES: Of the 215 people, they probably
15 haven't been designated yet. This is just a number that you
16 have in mind?

17 MR. POPEJOY: No.

18 SENATOR HUGHES: They have been designated?

19 MR. POPEJOY: Yes, they have been designated.

20 SENATOR HUGHES: Of these 215 people, how many of
21 these people were in prior state service? Do you have any idea?

22 MR. POPEJOY: I don't, Senator Hughes, but I
23 would doubt if many of them were, because they probably, if they
24 had prior state service, they had high enough on the seniority
25 list, they wouldn't be affected by the layoff. But that's a
26 guess, and I hope an educated guess, but not really a concrete
27 answer.

28 SENATOR HUGHES: Could you find that information

1 out for me?

2 MR. POPEJOY: Yes, ma'am.

3 SENATOR HUGHES: I would be interested in that.

4 The other thing I want to ask, recently you have
5 changed the choices of players to make a determination as to
6 whether they want to get their prize money in a shorter period
7 of time or in a longer period of time.

8 Would you please explain it to me? I really
9 don't understand it.

10 MR. POPEJOY: Okay. One of the things, going
11 back to Senator Lewis's question, what are you doing to make the
12 Lottery sell more tickets? I said one of the things we're
13 trying to do is make the game more attractive, the games more
14 attractive; make your chances of winning greater.

15 We've noticed in other states where they offer
16 the equivalent of our Super Lotto, that their ticket sales have
17 been sort of the going down over the years. And they've been
18 able to reverse the trend when they offered cash options. They
19 found out a sizeable part of the population are at an age that
20 they don't want to be paid out over 25 or 30 years. They want
21 the money now.

22 In fact, it's interesting to maybe observe that
23 the huge jackpot we had recently, the \$102 million jackpot, we
24 had three willing tickets. All three chose the cash option.
25 It's proven to be a very popular thing with the players.

26 So, we're trying to make the game more
27 attractive, more fun, and more meaningful to people who play.

28 SENATOR HUGHES: But then also by doing that, you

1 make more money available to invest for the Lottery?

2 MR. POPEJOY: No, really, the Lottery doesn't
3 make any money one way or the other.

4 SENATOR HUGHES: But don't you take some of that
5 money and invest it in things to try to get more money for the
6 future to keep the Lottery Commission going?

7 That's just a question. I'm not asserting that;
8 I'm asking.

9 MR. POPEJOY: No, I understand. It's a question
10 that's been asked before, and it'll take time before we really
11 can communicate that the Lottery doesn't make more money one way
12 or the other.

13 If you choose cash or 26-year annuity, the
14 Lottery's circumstance is the same. If you choose cash, we give
15 you the cash. If you say, okay, I want a 26-year annuity, we
16 take that cash and invest it in your behalf in Treasury
17 obligations for 26 years. So, we basically are ambivalent which
18 way you go.

19 SENATOR HUGHES: Do you think that the players
20 are totally aware of what your new system brings to them
21 immediately or in the long run? Because I went to one place,
22 and the gentleman said, well, we don't have this new choice
23 yet.

24 Did you try to start it all over the state
25 simultaneously, at the same time? Why would one vendor say that
26 players didn't have that option when it had been advertised that
27 they did?

28 MR. POPEJOY: I have no explanation. We have

1 19,375 vendors. They have probably on an average of nearly six
2 employees with a good deal of turnover. And I think that, like
3 most business people, they do a good job as best as they can,
4 but the information you heard was absolutely in error.

5 It'll take time. We've sent out all sorts of
6 pieces of information to our vendors, our retailers. We have
7 our sales force working with the retailers.

8 I think the level of awareness pretty good when
9 you consider 44 percent choose cash options, but we've received,
10 Senator Hughes, all sorts of information where people said, hey,
11 I was told I had to take cash, or I was told I to take the
12 26-year annuity. And that's just a matter of educating the
13 retailers to make sure that the people know they have an option.

14 One of the nice things about the huge jackpot,
15 the education program was really accelerated because there was a
16 great deal of focus on, I can choose cash, or I can choose
17 annuity.

18 SENATOR HUGHES: So, this vendor told a
19 constituent of mine that his machine, his computer, was not set
20 up to make that choice yet. So, that was an untruth and not the
21 reality?

22 MR. POPEJOY: That's correct.

23 SENATOR HUGHES: So, all the computers were set
24 up to do that already?

25 MR. POPEJOY: Well --

26 SENATOR HUGHES: This was a gas station.

27 MR. POPEJOY: With 19,375 retailers, there may
28 have been one out there whose machine wouldn't handle this, but

1 I don't think that was the case.

2 SENATOR HUGHES: But it would not have been to
3 the advantage of the vendor anyway?

4 MR. POPEJOY: None. No advantage whatsoever.
5 All they do, Senator Hughes, is ask cash or annuity, and make a
6 designation one way or the other. They have to fill out one or
7 the other. And if nothing's filled out, it automatically goes to
8 annuity.

9 SENATOR HUGHES: In the Orange County bankruptcy
10 situation, you played a major role.

11 Are you going to see that our schools are not
12 bankrupt any more, and that the Lottery Commission is going to
13 make every positive effort to see that we can help with
14 education dollars more?

15 MR. POPEJOY: Well, the fun part of this job is
16 that I really do feel part of something that is making a
17 contribution. I don't mean to sound like a do-gooder, but I'm
18 at a point in my life that I would like to be involved with
19 things that I'm proud of.

20 The unfortunate part of the Lottery's efforts,
21 even after we go to a billion dollars, and we will, that that
22 represents -- will represent, on a projected basis, about two
23 percent of the budget for K through 16 -- no, we go K through
24 14, we go through junior college.

25 And it just really is hard for the people in the
26 education community to feel that it makes a difference. It
27 would be nice over time, and this would be well beyond my time
28 as the Director, if we could revisit how the money is used.

1 In other states it's used, for example, for
2 scholarships, and they're called Hope Scholarships. In Georgia,
3 I believe over 80 percent of the incoming freshmen are on Hope
4 Scholarships funded by the Lottery. And you can really tell
5 where it makes a difference.

6 But we have such a huge state, and our budget's
7 so large for education, that even though we will make the
8 Lottery a lot more productive, a lot more profitable for
9 education, it's still going to be a small piece of the education
10 budget.

11 SENATOR HUGHES: Thank you.

12 CHAIRMAN BURTON: Senator Ayala.

13 SENATOR AYALA: Mr. Popejoy, I don't want to go
14 over plowed ground. I think they covered the subject matter
15 pretty good.

16 I'd like to ask you about the decrease of Lottery
17 staff by the end of this fiscal year. I'm not one of those that
18 believe that government's in the business to provide jobs. I
19 think that government's in the business to create a climate
20 whereby industry and commercial development take place to create
21 jobs. We have to hire some people because there's some service
22 they've got to provide.

23 So, I'm not all that concerned about this issue,
24 except that I want to make sure that the work itself, you have
25 evidence that the Lottery program will continue as well or
26 better in the years to come with a reduction of personnel? Do
27 you have evidence to that effect?

28 MR. POPEJOY: Well, we have projections, and you

1 know how weak they can be, Senator Ayala. We have evidence from
2 other states where we're duplicating their programs and do the
3 same work with fewer people.

4 The reason we've been able to move so quickly, we
5 went to other states, particularly New York and Ohio, and we
6 copied what they're doing. Their systems, their equipment,
7 largely emulated what they're doing so we can be more
8 efficient. They're more efficient than us.

9 There's no guarantees that I would try to make
10 you regarding the future. I'm very confident that our programs
11 will probably over perform our estimates, and early indications
12 are just that. But my crystal ball sometimes has been cracked.

13 We've asked our people at the Lottery to
14 basically plow their fields with work horses, and basically
15 we're giving them tractors. We're giving them tools so they can
16 be more efficient.

17 SENATOR AYALA: Are you suggesting that prior
18 Directors were over populated with employees to the extent of
19 215, and you find that they were doing what? Not much of
20 anything? So, you've got to get more close to the bone, so to
21 speak, with the number of employees.

22 As I said earlier, I'm not one of those that
23 feels that government must provide jobs for people. I think
24 that the duty of government is to provide the climate whereby
25 industry and commercial development to provide jobs. Of course,
26 we've got to hire people to provide some services.

27 So, I'm not all that concerned about this lack of
28 people being dismissed, or are being dismissed, 25 percent.

1 Again, I'm concerned that the evidence that you
2 have will project to just efficient or better job by the Lottery
3 than we're doing today.

4 MR. POPEJOY: Yes, all of our evidence, all of
5 our analysis, would indicate that we'll be able to do a much
6 better job, higher volume, with fewer people.

7 That doesn't mean the people who were here in the
8 past didn't work. It just means we've been able to utilize
9 better automation, better technology, systems that require fewer
10 people.

11 So, I have every confidence that we will be able
12 to do a better job than we are doing now, with 800-some
13 employees, when we're down to around 615, a better job.

14 SENATOR AYALA: Two hundred fifteen employees is
15 an awful lot of employees to just let hang on there by prior
16 Directors.

17 MR. POPEJOY: I'm not so sure, Senator Ayala,
18 that they just hung on.

19 We've taken since last June to put in new
20 systems, to adapt new technology, to use new computer systems,
21 and we're still implementing that, that allows us to do more
22 work with fewer people.

23 And the real nice part of the story from my
24 standpoint, I don't like to see people lose their jobs either,
25 but those savings, particularly if we can absorb the people
26 elsewhere in state government, and that's our objective.

27 SENATOR AYALA: Innovations created the less need
28 for these employees?

1 MR. POPEJOY: Yes, absolutely.

2 SENATOR LEWIS: In furtherance of one of the
3 questions Senator Hughes had about the vendors receiving some
4 kind of financial reward, on the sale of a Super Lotto ticket,
5 doesn't the establishment get some kind of a cut or reward for
6 selling the winning ticket?

7 MR. POPEJOY: The retailer? Yes, they get a lot
8 more than we get. They get 6.6 percent on average; 6 percent
9 when they sell the ticket. Then when they redeem tickets, the
10 total payment percentage-wise to our retailers is 6.6 percent.

11 SENATOR LEWIS: On that 6.6 percent payout, are
12 they affected at all by how the player of the Lotto chooses?

13 MR. POPEJOY: No, none whatsoever. None
14 whatsoever.

15 SENATOR LEWIS: Just the other question is, is
16 California the largest lottery in the country? Is our Lottery
17 the largest in the country?

18 MR. POPEJOY: No, sir, Senator, I believe it's
19 the fifth largest.

20 SENATOR LEWIS: The fifth largest?

21 MR. POPEJOY: That's correct. I believe that New
22 York, Texas, Ohio, Georgia, are ahead of us, and maybe Michigan.

23 SENATOR LEWIS: Is that one of the reasons that
24 you might have been looking at streamlining the operation?

25 MR. POPEJOY: Absolutely. We went and watched to
26 see what they were doing.

27 SENATOR LEWIS: Fifth largest, but we had the
28 most employees?

1 MR. POPEJOY: Well, you know, we were the largest
2 number of employees by far, and I thought we still were the
3 largest number, but that wasn't our objective. But we are the
4 fifth largest in terms of sales volume.

5 SENATOR LEWIS: Thank you.

6 CHAIRMAN BURTON: I would think the number of
7 employees is irrelevant to whether people buy Lottery tickets or
8 not. I think that you may have been, because there was a bill
9 to have you reduce your overhead, your administrative costs or
10 something, that may have led to some review and downsizing. But
11 you could hire 55,000 more people, or fire everybody you've got,
12 and I don't really know whether that's going to affect whether
13 people buy a ticket or not.

14 I think they buy it off the advertising and the
15 word of mouth.

16 On that 6.6 percent, so if somebody sold the
17 winning Super Lotto ticket, and it was \$100 million, they pick
18 up 6 million?

19 MR. POPEJOY: No, it doesn't work that way. If
20 they sold a ticket, and it was a one dollar ticket, they have
21 6.6 cents.

22 CHAIRMAN BURTON: Then don't they get a hit out
23 of a big winning ticket?

24 MR. POPEJOY: They get a bonus, but it's nothing.

25 May I respond to your earlier observation when
26 you indicated that if you have a whole lot of employees or a few
27 employees --

28 CHAIRMAN BURTON: I don't think that's relevant.

1 In other words, laying off employees won't increase sales;
2 hiring ten more, I don't think, will increase them.

3 MR. POPEJOY: That would be a reasonable
4 observation, but what we've done --

5 CHAIRMAN BURTON: I pride myself in being a
6 reasonable person.

7 MR. POPEJOY: What we've done, Senator Burton, is
8 take the savings from our administration and add that to our
9 prize pool, and that's what's driving the sales.

10 In other words, we're taking the money we're
11 saving out of running the Lottery and putting it in the prize
12 pool, giving the players a better chance to win.

13 CHAIRMAN BURTON: How much money have you saved
14 in laying off people in the last six months?

15 MR. POPEJOY: None.

16 CHAIRMAN BURTON: So what are you saying, you're
17 saving money.

18 MR. POPEJOY: We've saved money by cutting
19 advertising budgets and cutting budgets in nonpersonnel areas.
20 We can't lay people off within six months. It takes about nine
21 months to lay people off under the state and union rules.

22 CHAIRMAN BURTON: How much have you saved that
23 drove the prize thing up?

24 MR. POPEJOY: About \$30 million.

25 CHAIRMAN BURTON: Over what?

26 MR. POPEJOY: Over one year.

27 CHAIRMAN BURTON: Was that from the advertising?

28 MR. POPEJOY: A lot of it from the advertising.

1 CHAIRMAN BURTON: One other question. It would
2 seem, and maybe I didn't answer, and then we'll hear from the
3 opposition, but it would seem if somebody wins 10 million cash,
4 they get 10 million cash. If they do it in annuity, the Lottery
5 has to put a lot less money into the pot to have it end up same
6 amount of money at the end of the term, right?

7 MR. POPEJOY: No, sir. If you collected 10
8 million in cash, you chose the cash option, if you said, okay I
9 really didn't want the cash option, assuming you could change, I
10 want it paid over 26 years, we would pay you approximately \$20
11 million over 20 years. How we got the 20 million is, take the
12 10 million in cash and invest it.

13 CHAIRMAN BURTON: If you take a pay-off over a
14 longer period, you will get more money? In other words, the
15 Lottery is investing it for --

16 MR. POPEJOY: That's correct. We invest it on
17 your behalf.

18 CHAIRMAN BURTON: Why would you do that?

19 MR. POPEJOY: Because that's the way annuities
20 work. You take a certain amount of money at the front end. You
21 invest it for, in our case, 26 years, and it pays out a greater
22 amount because you get a combination of --

23 CHAIRMAN BURTON: In baseball contracts when
24 they're doing that, they're investing a smaller amount of money
25 in front. As the annuity grows, that brings the money in.

26 So basically, if they won 10 million, you're
27 saying if they won 10 million, we're investing the money for
28 them.

1 What benefit is it to us to do that?

2 MR. POPEJOY: None, none. It's strictly a
3 benefit to the player.

4 SENATOR LEWIS: That's not a detriment, either.

5 MR. POPEJOY: No, no. We're neutral. We
6 couldn't care less.

7 CHAIRMAN BURTON: It just seems kind of odd.

8 MR. POPEJOY: Well, we're trying to attract, as I
9 mentioned earlier, Senator Burton, as wide an audience of
10 player-ship as possible. We've found out when we had only the
11 20-year payout, which we changed to 26 years, that we would --
12 certain players, potential players, just weren't interested, and
13 they particularly were senior citizens. They said, why do I
14 need to be paid over 20 years or 26 years if I'm 60 years old?

15 CHAIRMAN BURTON: That's when you went to cash.

16 MR. POPEJOY: That's right.

17 CHAIRMAN BURTON: But when you advertise the win
18 the amount, you advertise one dollar amount. You don't say, if
19 you win, you get \$10 million, but if you take it over 26 years,
20 you get 22 million.

21 MR. POPEJOY: We advertise the amount you get
22 paid over 26 years. That's required by the Lottery.

23 CHAIRMAN BURTON: So, you say that if you win,
24 you get either 10 million or 26 million, which ever way you pick
25 it?

26 MR. POPEJOY: No. I don't know where the 26
27 million came in --

28 CHAIRMAN BURTON: I was just using a figure, that

1 if you took the 10 million and put it in government bonds, and
2 you ended up with 26 or 27.

3 MR. POPEJOY: I think it's better to describe, if
4 you see the sign on Highway 5 as you go towards the airport, and
5 it's flashing \$20 million, and you decide you want to win, and
6 you choose the cash option, you will get approximately \$10
7 million. If you decide you want to be paid over 26 years, then
8 you will get exactly \$20 million over 26 years.

9 CHAIRMAN BURTON: So, that's rather misleading
10 advertising.

11 MR. POPEJOY: I don't think so. It isn't meant
12 to be. We advertise the 26-year pay out, but you have the
13 option of taking --

14 CHAIRMAN BURTON: Does the billboard say \$26
15 million over 20 years, or does it say \$26 million flat?

16 SENATOR HUGHES: The ticket, you make a choice on
17 the ticket. That's what I have been asking about.

18 CHAIRMAN BURTON: No, but what I'm saying is, the
19 billboard gives you the top --

20 MR. POPEJOY: The 26-year payout.

21 CHAIRMAN BURTON: Right, but I mean, so I walk in
22 there in theory, but does the billboard say \$20 million over 26
23 years?

24 MR. POPEJOY: No.

25 CHAIRMAN BURTON: I think that's misleading. No
26 big deal, but it's misleading.

27 SENATOR LEWIS: Maybe you should have a giant
28 asterisk.

1 MR. POPEJOY: If it's misleading, we should take
2 a look at it. We don't want to do things that are misleading

3 CHAIRMAN BURTON: You don't think it's
4 misleading?

5 I don't know much about Lottery, and I either
6 know more or less than people in my neighborhood who go down to
7 Tony's Market and buy a ticket. But it would seem to me, if it
8 said 20 million, I kind of have the thought I could walk in, if
9 I hit, I have \$20 million, not 10.

10 MR. POPEJOY: Well, then we should do a better
11 job of advertising, particularly if you buy a ticket.

12 What we did was look at other states where they
13 have introduced the cash option, and tried to emulate everything
14 they did to avoid problems that they experienced. So, we were
15 very careful in trying to introduce a program that contemplated
16 the problems that may come up, but it's still a learning
17 experience.

18 If it's felt that those signs are misleading,
19 then maybe we ought to look --

20 CHAIRMAN BURTON: It seems to me, it doesn't say
21 20 million over 26 years. It says 20 million. I think I win 20
22 million when I hit the numbers.

23 MR. POPEJOY: I understand what you're saying.

24 CHAIRMAN BURTON: Does it make any sense, what
25 I'm saying?

26 MR. POPEJOY: It does make some sense, yes.

27 CHAIRMAN BURTON: I think it makes a hell of a
28 lot of sense.

1 MR. POPEJOY: Today, Senator Burton, everything
2 you say makes a lot of sense.

3 [Laughter.]

4 CHAIRMAN BURTON: Well, my sense of humor is not
5 that good.

6 MR. POPEJOY: I don't mean to offend you, but
7 your observation does make sense.

8 What we tried to do is respond to a demand from
9 the players. And we'll be fine-tuning this game and our
10 advertising.

11 CHAIRMAN BURTON: The player demanded that you
12 put up a number that they can get over 26 years without saying
13 it's over 26 years?

14 MR. POPEJOY: The players did not demand that,
15 no.

16 CHAIRMAN BURTON: But then you're telling me that
17 you are responding to a demand of the players, with the subject
18 matter we're discussing, where the players never even mentioned
19 it in their dreams.

20 MR. POPEJOY: I don't know what the players
21 mentioned in their dreams. We tried very carefully --

22 CHAIRMAN BURTON: I know what I mention in my
23 dreams, and you ain't doing yourself much good with me, for what
24 the hell that's worth, sir.

25 Let's hear from the opposition.

26 SENATOR LEWIS: May I follow up?

27 SENATOR AYALA: I have one more question, Mr.
28 Chairman.

1 SENATOR LEWIS: I think the point that's being
2 made is somewhat valid. I mean, how difficult would it be to
3 put on the bottom of a billboard, paid over 26 years?

4 MR. POPEJOY: No problem whatsoever.

5 SENATOR LEWIS: Is that something you will
6 consider?

7 MR. POPEJOY: Certainly, certainly.

8 SENATOR AYALA: I have one question.

9 CHAIRMAN BURTON: Senator Ayala and then
10 opposition.

11 SENATOR AYALA: Mr. Popejoy, is it your plan to
12 privatize the Lottery system during your tenure?

13 MR. POPEJOY: No.

14 SENATOR AYALA: It is not your intent to
15 privatize the Lottery system?

16 MR. POPEJOY: No. That would take five or ten
17 years, and that's not reasonable for me to even contemplate.

18 SENATOR AYALA: Thank you.

19 MS. GOLDEN: Good afternoon, Mr. Chairman and
20 Members. Sherrie Golden, representing the California State
21 Employees Association.

22 We don't appear before this Committee too much.
23 Unfortunately today, we are here to oppose Mr. Popejoy's
24 confirmation. Since he has been the Director, we have lots of
25 problems with the Lottery. Mr. Wayne is a Lottery employee;
26 I'll let him go on to discuss those in detail.

27 There's been contracting out. We have a 44-page
28 unfair we filed against the Lottery.

1 And in talking about the people who are there for
2 layoffs, we're in the bargaining process right now, and it seems
3 to me that should have been part of the bargaining process. If
4 you want to lay off 215 people, why didn't you do it through the
5 bargaining process? The Governor wants enough through the
6 bargaining process. Now he's going to get that, plus 215
7 people.

8 I think the message that was sent to the Lottery
9 was to do some rearranging; to look at your administrative
10 costs; to look at ways you could save money. Some how, that's
11 resulted in 215 people leaving, and 215 people, whether they get
12 another job or not, we don't know. I don't know if they're
13 ready for early retirement, nor can they afford early
14 retirement. It's very disruptive, and we just don't think it
15 was necessary.

16 And I don't think that the Director looked very
17 hard at the picture. I think he could have chosen some
18 different options.

19 So, we find this very upsetting, especially for
20 people who have been in a state of not having pay raises for the
21 last four years.

22 So, I will turn this over to Mr. Wayne. He works
23 at the Lottery, and he can answer some of the questions I'm sure
24 that you have.

25 Thank you.

26 MR. WAYNE: The first thing I'd like to do is
27 thank the Committee for allowing me to speak and tell you right
28 now, I understand how David felt going against Goliath'.

1 Anyway, I believe that Mr. Popejoy should not be
2 confirmed as the Lottery Director for a number of reasons.

3 First, for many of his decisions that have been
4 made at the expense of Lottery revenue. Briefly, these
5 decisions include a cap on the retailer network, termination of
6 subscription play. Every other week telemarketing calls creates
7 out of stock problems. The scratcher ticket and the auto-ship
8 or forced ship program to retailers, which will send them
9 tickets they may or may not want, which is confusing and
10 disruptive to the retailers.

11 Being a district sales rep, and working with
12 approximately a hundred retailers, that's been a complaint of
13 the retailer.

14 These decisions, among others, indicate his
15 inability to run the Lottery in a fiscally sound manner.

16 It is agreed, and I agree, and I think most of
17 the people in the Lottery agree, that Lottery operating expenses
18 must be reduced, but waste is not at the rank and file level as
19 Mr. Popejoy believes. Rather, it's at the management level.

20 The Lottery did not comply with a public records
21 request from CSEA to allow us to review the worksheets used by
22 management under Mr. Popejoy's direction in his decision to make
23 215 mostly rank and file job cuts. CSEA sought to review these
24 worksheets in order to determine why hardly any cuts were made
25 in management. And conversely, a number of managers were
26 promoted. And why the Lottery's spending on vendor services
27 will apparently continue unabated, despite a litany of
28 boondoggles.

1 Given the prospect of massive layoffs, employee
2 morale is at an all-time low. The rank and file employees
3 apparently understand what Mr. Popejoy does not. Specifically,
4 that eliminating 215 full time mostly rank and file positions,
5 30 percent of the workforce, will greatly weaken the Lottery.

6 Moreover, the merger of four district offices,
7 eliminating 40 state sales reps and all district warehouse
8 personnel, will weaken the retailer network. Decreasing workers
9 at the district level and increasing supervisors will increase
10 redundancy and expenses, a shell game at best, and dishonest at
11 worst.

12 With reduced staff, the Lottery will not be able
13 to run efficiently and effectively, and the result will be less
14 retailer service and reduced sales. With reduced sales, the
15 layoffs will have done nothing to reduce expenses, and the
16 downward spiral will continue.

17 The biggest loser will be the schools, who will
18 get less revenue.

19 Now, Mr. Popejoy, the other thing while you're
20 here, we met, as you remember, July 23rd, 1997. There was a
21 labor-management meeting, and I was present, as Rosemary Duffy,
22 Carl Arnellis, and Diana Gallegar from the union side.

23 You mentioned to us at that meeting that you were
24 a union steward, if I remember right, for Aero Jet General.

25 MR. POPEJOY: That's right.

26 MR. WAYNE: And a football coach.

27 MR. POPEJOY: No, I wasn't a football coach.

28 MR. WAYNE: You told us at that meeting, and

1 there were other people there besides myself, that there would
2 not be substantial layoffs at the Lottery, maybe a little
3 tweaking.

4 So, we are perplexed, surprised, and shocked by
5 your actions in view of the fact of what you told us at that
6 meeting.

7 I thank the Committee for their time, and I
8 entertain your questions. I hope I can answer them.

9 CHAIRMAN BURTON: Couple questions.

10 What was the reason for refusal of the public
11 records request that the employees had?

12 MR. POPEJOY: I found out about it last Thursday
13 because I didn't know what they were referring to when they
14 mentioned that we didn't comply with this request. And that did
15 concern me greatly.

16 And in checking into it, there was a request last
17 October, I believe, for information about work in process. We
18 didn't have conclusive papers. They wanted things that were
19 working papers, and we said no, we're not done. In fact, our
20 first cut-back in October, when we submitted what was called a
21 Bridge Plan, Senator Burton, was for 230-some employees, and the
22 final plan that finally was approved by DPA was 215 employees.

23 As soon as we finalized the plan, because it kept
24 changing, we gave them the documents.

25 But I don't believe we ever refused any request
26 for final documents. Documents in process that weren't
27 completed and were not conclusive and may be misleading were not
28 supplied.

1 CHAIRMAN BURTON: Wouldn't it be maybe better if
2 you're thinking of doing something that affects the workforce
3 and peoples' lives, that as you're going through it, you work
4 with them? They may come up with some suggestions before it's
5 finalized that you may accept, may reject, or may make sense to
6 you and say, yeah, yeah, we could save money and do it that way.

7 MR. POPEJOY: Absolutely, and I believe that was
8 done. I believe that we did work with our employees. In fact,
9 in June of last year, I sent out a letter that followed a
10 meeting with the employees that said, basically, ask Bill.
11 Just -- I even said, send us information anonymously if you
12 wish.

13 The idea of early retirement came from our
14 employees. It didn't come from our management.

15 By the way, let me mention something --

16 CHAIRMAN BURTON: What didn't come from
17 management? The layoffs?

18 MR. POPEJOY: No, the early retirement. In other
19 words, see if you can get early retirement for our employees.
20 That came from the employees. That didn't come from management.

21 CHAIRMAN BURTON: Early retirement, somebody
22 who's been on the job ten years, unless they're close to
23 60-something years old, ain't much of a deal.

24 MR. POPEJOY: Well, our people are pretty happy
25 with that. We have a number of people that are very pleased.

26 CHAIRMAN BURTON: It's better than a jab in the
27 eye with a sharp stick, but it's not a consumation devoutly to
28 be wished, I don't think.

1 MR. POPEJOY: I don't know. I'm not the person
2 who is seeking early retirement, but I'm just suggesting to you
3 that it seems to be very important for our employees.

4 CHAIRMAN BURTON: It was better than being thrown
5 out in the street, clearly.

6 MR. POPEJOY: I think it's a lot better than
7 being thrown out in the street.

8 CHAIRMAN BURTON: As you explained it, early
9 retirement means you can retire early, I guess, so you're adding
10 two years of service, or two years to their age?

11 MR. POPEJOY: Just two years of service. But if
12 you're two years away from having the required number of years
13 to vest, it makes a big difference.

14 CHAIRMAN BURTON: Well, vesting and retirement
15 are two different things; aren't they?

16 MR. POPEJOY: This is early retirement. It's my
17 understanding they can retire --

18 CHAIRMAN BURTON: They can retire with it. You
19 can retire at 50 with 11 years' service?

20 MR. POPEJOY: I don't know what the age
21 requirement is.

22 CHAIRMAN BURTON: That would be important;
23 wouldn't it?

24 MR. POPEJOY: I don't have the answer.

25 CHAIRMAN BURTON: What would be the answer?

26 MR. WAYNE: Our personnel department came down
27 and told us that the two years were not for age but just time.
28 So, and you have to be 50 to retire. You must be 50 by state

1 law to retire.

2 I'm really not clear or sure, based on what our
3 personnel department tells, if you were 48, that you would get
4 the two years to 50. I think that has to be researched.

5 MR. BRYANT: Senator Burton and Committee, my
6 name is Joan Bryant. I'm the Bargaining Services Manager
7 California State Employees Association.

8 I would like to bring to the Committee's
9 attention that while the two years is being added, many
10 employees who were hired since 1990 must put in 10 years of
11 service before they retirement vest. So, this is not going to
12 be of benefit to a great majority of the employees who may be
13 laid off.

14 One of the other issues that I would like to
15 address that Mr. Popejoy talks about, we have a Labor Management
16 Committee, and the purpose of that committee is to talk about
17 issues before they become problems and to offer solutions. So,
18 when information is denied to us, then we cannot offer solutions
19 to that problem.

20 And when he talks about the Bridging Program,
21 this is where workers contracted out to GTECH, and the employees
22 that are about to be laid off now are employees that were
23 absorbed into the system, and we were told that would not be
24 laid off.

25 Now, we are back some months later, and 215
26 positions are going to be gone. I might add that 215 positions
27 may equate to more than 215 employees, because sometimes people
28 are working part-time, and so two people might occupy one

1 position.

2 CHAIRMAN BURTON: Senator Ayala.

3 SENATOR AYALA: How do you respond to the charge
4 that you are trying to somewhat balance the budget of your
5 department through the rank and file level, where the problem
6 has to be on the managerial area? How do you respond to that
7 charge?

8 MR. POPEJOY: I think that that comment that was
9 made, maybe based on misinformation, is terribly misleading.

10 My understanding, the supervisor to
11 non-supervisor ratio will be almost identical before the layoff
12 and after the layoff. We're very sensitive to having -- well,
13 that's the data that I have, and I'm very concerned about
14 anything to the contrary. So, I believe that data's correct,
15 that the ratio of supervisor to non-supervisor personnel is
16 almost identical before and after. Not identical, but almost,
17 very close. I think it's eight-tenths of one percent
18 difference.

19 SENATOR AYALA: So you don't agree with that
20 charge?

21 MR. POPEJOY: No, I don't. We will supply the
22 information.

23 We're not interested in doing things that are
24 inaccurate, things that are done in the dark of night.

25 The data that we have, like this so-called
26 request for information, it was never brought to my attention
27 until last Thursday.

28 I'm just saying, Senator, that I'm willing to do

1 anything to be fair. I've been on the other side of layoffs. I
2 have worked with a union. I worked my way through college
3 working the swing shift in a union. I'm very concerned with the
4 working person.

5 And the so-called royalty looking down on the
6 working people, we are not going to have that at the Lottery.
7 The Lottery is going to be cut across lines, supervisor and
8 supervised, on an even and on a fair basis.

9 CHAIRMAN BURTON: Let me tell you what concerns
10 me, and this is not unlike something we had with a couple people
11 in Corrections.

12 You have an issue that's very important, because
13 you're going to be laying off people. That usually doesn't
14 happen -- like everybody says, that's a hell of a deal -- and
15 nobody thought to bring to your attention until Thursday a
16 request for information about that issue.

17 That's a bigger concern to me that whoever you've
18 got underneath you didn't figure.

19 It was like that deal when they didn't pass
20 something up the line at that prison. That's a real problem.

21 In other words, you've got people there that
22 didn't say, Jesus, Pope, here we've got this problem and what
23 should we do about this, and you find out about it two days
24 before you're coming before us.

25 That's not your fault -- I mean, it's your fault
26 in a way -- but it's the fault of the people underneath, that
27 they're so insensitive both to them and to you that they figure
28 no big deal.

1 MR. POPEJOY: I don't think that -- I don't think
2 after the meetings I've had with people that work with me, that
3 they would be insensitive to that.

4 CHAIRMAN BURTON: You first heard about it last
5 Thursday. Somebody, if they weren't insensitive, they were
6 asleep.

7 MR. POPEJOY: Senator, the request, as I
8 understand it, even though it was recent information for me, was
9 one that was given to DPA for a judgment, should we give
10 information that is incomplete.

11 We've already shared in public meeting about 40
12 pages of detail. Should we give information that's incomplete
13 at this point. In fact, it may indicate to people that they
14 think are going to get laid off and they won't be laid off, or
15 to people who think they're not going to be laid off, they are
16 going to be laid off, because the process hadn't been
17 completed.

18 By the way, we gave this information to them four
19 months ago. No Union representative ever came to me, and
20 they're welcome to give me a phone call, the same meeting that
21 someone's talking about, I said, any time you've got a problem,
22 please call me. And they've never done that.

23 I don't think this was a big problem. I don't
24 think it was a legitimate request, because you can't ask for
25 someone to give you an in-process request for information that
26 is incomplete, and might even be misleading.

27 CHAIRMAN BURTON: We may differ on that.

28 So, are you going to be able to give us a list of

1 line personnel versus supervisor personnel?

2 MR. POPEJOY: Yes, sir.

3 CHAIRMAN BURTON: Not necessarily by names, but
4 by numbers.

5 MR. POPEJOY: Percentage.

6 CHAIRMAN BURTON: Here's a breakdown of the 215:
7 district sales reps, office techs, program techs, material and
8 store specialist, stock clerks, computer operators, government
9 program analysis, staff services analysis, telemarketing.

10 I don't see any supervisors here at all, unless
11 the stock clerks are supervisors.

12 MR. WAYNE: Senator Burton, may I speak on that
13 subject?

14 CHAIRMAN BURTON: I was asking him.

15 MR. WAYNE: Right. I just wanted to answer
16 something, a comment he mentioned.

17 CHAIRMAN BURTON: I guess, but anyway, I think
18 most of them are right there. We can give you that.

19 So, that doesn't bode well for whatever the
20 comment was.

21 They're also laying off sales reps and district
22 reps. I assume sales reps go around, try to hustle up sites or
23 what?

24 MR. POPEJOY: Well, they do that, and they also
25 -- they're our primary contact with the retailer network.

26 CHAIRMAN BURTON: So, we're laying off the people
27 that hustle the product.

28 MR. POPEJOY: Many of them, yes, sir.

1 CHAIRMAN BURTON: Forty of them.

2 District warehouse personnel, I have no idea what
3 that might be.

4 I'd like to know who you're keeping, because
5 those are the people -- that's not being in the liquor business
6 and laying off the people who go around to the bars and the
7 restaurants, trying to get people to stock your product.

8 MR. POPEJOY: One of the comments the gentleman
9 made was that we're not doing as well for education.

10 CHAIRMAN BURTON: I'm asking a question. I don't
11 want to hear your comment to his that you're not doing as well
12 for education.

13 MR. POPEJOY: I'm trying to tell you why we did
14 what we did, and how we're trying to make it more efficient.

15 The California State Lottery, before this lay
16 off, had more people in its sales and marketing division than
17 they had in the entire state lottery for the State of New York,
18 and its lottery is twice as big as ours. Just our sales
19 operation. We were over staffed, inefficient, wasting money,
20 wasting money for education.

21 CHAIRMAN BURTON: That's why you got rid of the
22 sales force.

23 MR. POPEJOY: Got rid of some of the sales force.
24 We have plenty left. We still more -- we still have a larger
25 sales force than any sales force in the nation, and we're the
26 fifth largest operator.

27 CHAIRMAN BURTON: Is all this based on the same
28 information, that we still have the largest workforce after

1 these layoffs than anybody, until we start looking at Florida?

2 MR. POPEJOY: The Florida numbers I'd like to
3 understand better.

4 CHAIRMAN BURTON: I'd like to understand these
5 numbers better, where you say there's a little devaluation of
6 the currency, where we have layoffs that look like we're laying
7 off a lot more worker bees than we are supervisor bees.

8 MR. POPEJOY: What you see are the people who are
9 actually leaving the Lottery. What you don't see are the people
10 who bump down through the ranks. People who go from supervisor
11 to nonsupervisor.

12 CHAIRMAN BURTON: Senator Lewis.

13 SENATOR LEWIS: Looking at the chart on page 17,
14 which I don't think you have, Mr. Popejoy, when you add up those
15 categories, it comes to 141. Whoever laid out this chart does
16 not detail all of them.

17 SENATOR HUGHES: Excuse me, I think you've got
18 wrong chart. Do you have page 31? Try page 31. You've got 174
19 sales reps. And now with the 40 he's reducing, it will still
20 leave him 134. It's page 31. He has 174 now, and it's going to
21 134. That's where the 40 come in.

22 MS. TANENBAUM: This is an outline that adds up
23 to 215.

24 SENATOR LEWIS: How many of these are
25 supervisorial versus nonsupervisorial?

26 SENATOR HUGHES: Are the sales reps considered
27 supervisorial?

28 MR. WAYNE: Rank and file.

1 SENATOR LEWIS: We're getting afield. I
2 mentioned the chart on page 17, because that was what Senator
3 Burton was referencing. I wanted to bring it to your attention
4 that that particular chart only talks 141 out of the 215
5 positions.

6 I had a question for the union representative.
7 Lottery employees are members of PERS; would that not be the
8 case?

9 MS. BRYANT: Yes, they are.

10 SENATOR LEWIS: What percentage of the Lottery
11 workforce have prior state service in other areas of state
12 government?

13 MS. BRYANT: We don't know. That would have been
14 one of the things in our information request, was to get those
15 kinds of statistics. So, we don't know.

16 SENATOR LEWIS: You would not have that
17 information just interfacing in your Union membership?

18 MS. BRYANT: No.

19 SENATOR HUGHES: That's the question that I asked
20 Mr. Popejoy before.

21 Mr. Popejoy, would it be possible for you to get
22 that information? I'm certain when you come up with a number
23 like 40 out of 174, couldn't you computerize it in some way and
24 come out with the information that we've asked for?

25 How many of those people were previously state
26 employees prior to coming on board, working for the Lottery?

27 MR. POPEJOY: I'm sure we can give you that
28 information, yes.

1 SENATOR LEWIS: My follow-up question for the
2 Union representative is, of the 215 that are being laid off, how
3 many will not be benefitted at all by the two years of
4 additional credit?

5 MS. BRYANT: We don't know that because they have
6 not yet identified for us who the individuals will be that's
7 laid off. So, that would help us to determine who had prior
8 state service, or who would benefit from the two years.

9 SENATOR LEWIS: I thought I heard you guys saying
10 earlier that the two years credit wasn't going to be much help
11 for a variety of reasons.

12 Now you're telling you don't know who it is, so
13 really couldn't be making that determination in the first place.

14 MS. BRYANT: I think what we know is the age of
15 the Lottery, and the number of employees who have gone there,
16 that we know some of the people have not been there for ten
17 years to be able to vest. Some have been there less than eight
18 years.

19 But the total number, and as I said earlier, out
20 of 215 positions, we don't know how many individuals will be impacted
21 by that.

22 SENATOR LEWIS: But if somebody had been there
23 for six years, and had been in some other state service for
24 three years, maybe the two years would make some difference to
25 them; correct?

26 MS. BRYANT: Yes, it could make a difference.

27 CHAIRMAN BURTON: I guess the chance would be,
28 again, getting back to the two years, the two years means

1 nothing if somebody's been on the job six years. It means
2 something to somebody who's been a state employee before, and
3 maybe even had 14 years' service. It gets them to 16, and
4 they're 59 years old, or something.

5 If you picked out people by name, or you just
6 know you have to get rid of X amount of stock clerks, for the
7 want of a better reason, but one of the ways to minimize the
8 personal hardship would be to take all the people. Because when
9 it's all over, these are numbers to you and me, and it's people,
10 the individual, it's their thing. They're out of a job. They've
11 got family. They've got a problem.

12 Some of them, it would be beneficial to, and
13 others, it doesn't make a difference.

14 Senator Knight, I believe you're next.

15 SENATOR KNIGHT: Thank you, Mr. Chairman.

16 You've been talking all around the questions. I
17 think my question's been talked about.

18 I was concerned about the 174 going down to 134,
19 whether 134 was enough sales representatives to cover the state,
20 considering that Florida now has 717. I don't know what they
21 are, but certainly they have a larger number of personnel in the
22 Florida Lottery than we have in California by a significant
23 number from a labor standpoint.

24 Should we have had more to begin with?

25 MR. WAYNE: To answer your question, when you
26 consider California population -- and I'm going by memory so
27 don't hold me to the last person, Senator -- is 31 million,
28 probably going on 32 million. So, the other state populations,

1 and in some cases like New York, which has one-third the
2 geographical area, and maybe half or 62 percent of the
3 population, we need that coverage.

4 SENATOR KNIGHT: That's not the question.

5 The question is, do we need --

6 MR. WAYNE: The answer is yes.

7 SENATOR KNIGHT: -- a significant number more
8 people to run the Lottery than the 853?

9 MR. WAYNE: Do we need more than 853? No, I
10 don't think so.

11 SENATOR KNIGHT: Well, 853 a was satisfactory
12 number?

13 MR. WAYNE: I think that numbers change all the
14 time, and you can tweak it, but I don't think you need a
15 dramatic change of 215 people. That's like taking a hammer to
16 an ant.

17 SENATOR KNIGHT: I'm asking whether the number
18 was right from a minimum standpoint?

19 MR. WAYNE: I think it's approximately right at
20 this point in time. Those people could be used. There's a lot
21 of talent, a talent pool. And instead of having all these
22 expensive contracts that the Lottery has of 50 million, and 30
23 million, and 150 million, and 20 million, some of the talent
24 could be used from our own employees.

25 So, the answer is yes, in my opinion, Senator
26 Knight.

27 SENATOR KNIGHT: Mr. Popejoy, how long have you
28 been acting Director?

1 MR. POPEJOY: Since May 5th, 1997.

2 SENATOR KNIGHT: This is the first cut in
3 personnel since you've been there?

4 MR. POPEJOY: Yes, sir.

5 SENATOR KNIGHT: I assume that this is as a
6 result of your evaluation of the Lottery management structure,
7 personnel requirements?

8 MR. POPEJOY: The answer to your question is yes,
9 sir, but it's also been the result of analysis of a whole lot of
10 other people that worked on the process. We've had virtually
11 hundreds of people, including rank and file people.

12 SENATOR KNIGHT: I'm assuming it was at your
13 direction?

14 MR. POPEJOY: That's correct.

15 SENATOR KNIGHT: The 215 layoffs, those are
16 actual body layoffs --

17 MR. POPEJOY: They are actual --

18 SENATOR KNIGHT: -- or are they positions? Are
19 they body layoffs or are they positions that are being
20 abolished?

21 MR. POPEJOY: Bodies.

22 SENATOR KNIGHT: Those are bodies. And they're
23 only bodies that correspond to the positions.

24 You don't have any more positions that you're
25 wiping out?

26 MR. POPEJOY: No.

27 SENATOR KNIGHT: So it's 215 bodies, 215
28 positions?

1 MR. POPEJOY: That's correct.

2 SENATOR KNIGHT: Thank you.

3 CHAIRMAN BURTON: Senator Ayala.

4 SENATOR AYALA: It seems to me that we should be
5 concerned with the merits of this individual performing, not
6 trying to micro-manage as to how many people are going to work
7 and how many are not.

8 If he's not doing job, let's don't confirm him.
9 But if he's doing the job, let him out and let him do his job.

10 So, quit micro-managing, and don't interfere with
11 the number of employees that he keeps or lets go. That's his
12 job.

13 And if he doesn't do the job, then we can judge
14 him in a further test we'll give him later on.

15 CHAIRMAN BURTON: Does that hold for Corrections?

16 SENATOR AYALA: I'm ready to move him out.

17 CHAIRMAN BURTON: Call for the question.

18 SECRETARY WEBB: Senator Ayala.

19 SENATOR AYALA: Aye.

20 SECRETARY WEBB: Ayala Aye.

21 SECRETARY WEBB: Senator Hughes.

22 SENATOR HUGHES: Aye.

23 SECRETARY WEBB: Hughes Aye. Senator Knight.

24 SENATOR KNIGHT: Aye.

25 SECRETARY WEBB: Knight Aye. Senator Lewis.

26 SENATOR LEWIS: Aye.

27 SECRETARY WEBB: Lewis Aye. Senator Burton.

28 Four to zero.

1 CHAIRMAN BURTON: Congratulations.

2 Senator Kopp was here to speak in support of
3 Mr. Popejoy and wants that on the record.

4 [Thereupon this portion of the
5 Senate Rules Committee hearing was
6 terminated at approximately 2:51 P.M.]

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I further certify that I am not of counsel or attorney for any of the parties to said hearing, nor in any way interested in the outcome of said hearing.

IN WITNESS WHEREOF, I have hereunto set my hand this

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EVELYN J. MIZAK
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APPEARANCES

MEMBERS PRESENT

SENATOR JOHN BURTON, Chair

SENATOR JOHN LEWIS, Vice Chair

SENATOR RUBEN AYALA

SENATOR TERESA HUGHES

SENATOR WILLIAM KNIGHT

STAFF PRESENT

GREG SCHMIDT, Executive Officer

PAT WEBB, Committee Secretary

WADE TEASDALE, Consultant to SENATOR LEWIS

FELICE TANENBAUM, Consultant to SENATOR HUGHES

JOSH LOWERY, Consultant to SENATOR KNIGHT

ALSO PRESENT

RICHARD F. ALDEN, Member
Board of Governors
California Community Colleges

GEORGE E. FENIMORE, Member
Teachers' Retirement Board

1890

1891

1892

1893

1894

1895

1896

1897

1898

1899

1900

1901

1902

1903

1904

1905

1906

1907

INDEXPage

Proceedings 1

Governor's Appointees:

RICHARD F. ALDEN, Member

Board of Governors

California Community Colleges 1

Background and Experience 1

Questions by SENATOR HUGHES re:

Need to Modify Vocational Programs
to Meet Needs of Welfare Recipients 2

Request to Report back on Meeting
that Challenge 3

Request to Look into
Availability of Child Care 3

Waiting Lists for Child Care 4

Other Priority Needs of Individual
Campuses in the System 4

Plans to Assist Students in
Transferring to Four-year Institutions 4

Questions by SENATOR AYALA re:

Preparing Students to Enter Four-year
Institutions after Community College 5

Questions by SENATOR KNIGHT re:

How Board Interfaces with Local
Community College Trustees 7

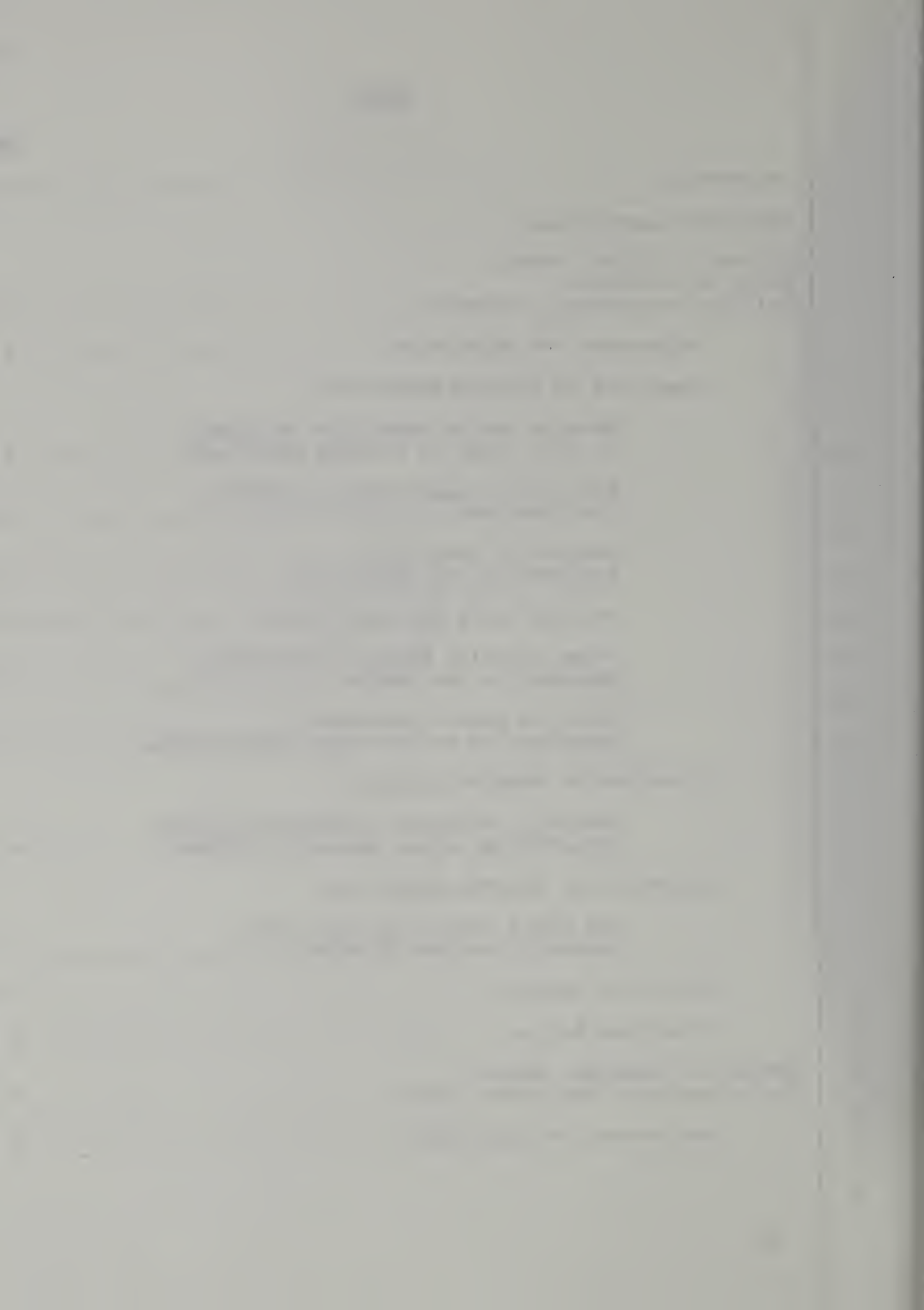
Motion to Confirm 7

Committee Action 8

GEORGE W. FENIMORE, Member

State Teachers' Retirement Board 8

Background and Experience 8



1 Statements by CHAIRMAN BURTON re:

2 Low Benefits for Retired Teachers 9

3 Questions by SENATOR HUGHES re:

4 Current Statutory Composition of
5 STRS Board 96 Elected Officials as Voting Members
7 of STRS Board 108 Position on Legislation to Phase Out
9 Investments in Tobacco Industry 11

10 Questions by SENATOR KNIGHT re:

11 Purpose of Study on Tobacco Investments 12

12 Questions by SENATOR LEWIS re:

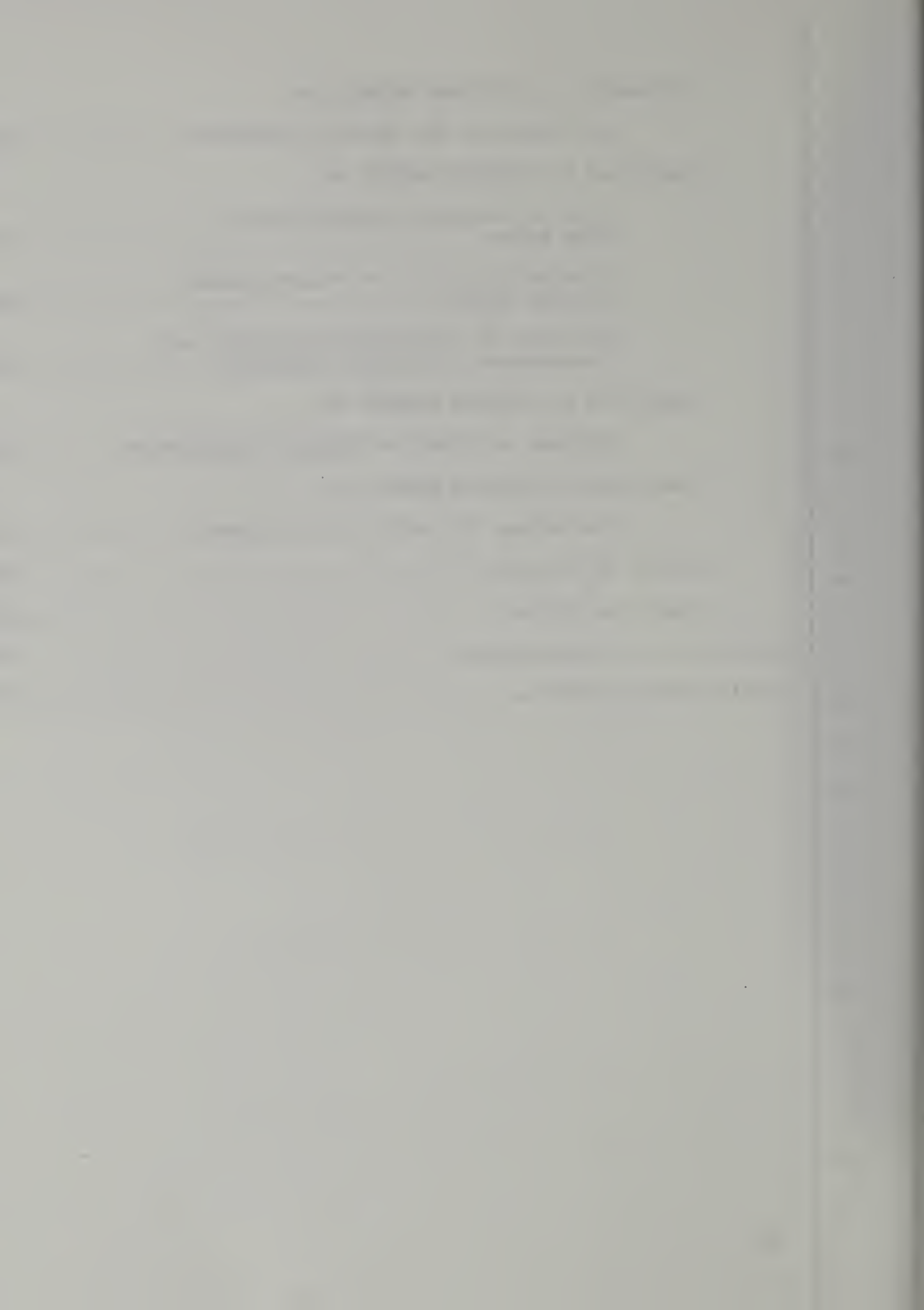
13 Percentage of Portfolio in Stocks 14

14 Motion to Confirm 15

15 Committee Action 16

16 Termination of Proceedings 16

17 Certificate of Reporter 17



P-R-O-C-E-E-D-I-N-G-S

--ooOoo--

CHAIRMAN BURTON: Governor's appointees, Richard F. Alden, sir.

MR. ALDEN: Richard F. Alden, appearing before the Committee.

As you all know, I'm Dick Alden, seeking confirmation of my appointment to the Board of Governors of the Community College system.

By way of background, when I graduated from Anaheim High School, I was going to go to Fullerton Junior College because we didn't have the money to pay for tuition and board and room. Fortunately, USC came through with a football scholarship and I went to USC.

CHAIRMAN BURTON: When was that?

MR. ALDEN: In 1942, sir.

CHAIRMAN BURTON: With Big John?

MR. ALDEN: John and I were freshmen together. He was the left tackle and I was the center.

CHAIRMAN BURTON: Mickey McArdle?

MR. ALDEN: Yes, he was there.

CHAIRMAN BURTON: I'm on.

[Laughter.]

SENATOR KNIGHT: How many years did they play?

CHAIRMAN BURTON: Mickey McArdle played about nine years, I think, as did Barney Poole from Army and Mississippi.

MR. ALDEN: Correct.

1 Anyway, after about three years in the Navy, I
2 went back to SC on the GI Bill of Rights and went to law
3 school. Went out, got a job, got married, had three children,
4 one of whom is a professor at the University of Hawaii right
5 now. Practiced law for number of years.

6 I became affiliated with Hughes Aircraft, became
7 Vice Chairman and General Counsel of Hughes. Retired from
8 there, went into the real estate business in subdivision, which
9 was an erroneous time to go in.

10 I've since left that endeavor and felt that with
11 this appointment, I possibly could add something to our
12 marvelous community college system.

13 I welcome any questions.

14 CHAIRMAN BURTON: Senator Hughes.

15 SENATOR HUGHES: Yes.

16 Under the new federal welfare reform legislation,
17 the amount of time spent in vocational ed. training will be
18 limited to only twelve months.

19 Since most of your certificated programs are
20 two-year programs, how does the community college propose to
21 modify the their programs to meet the needs of welfare
22 recipients? Have you thought about this?

23 MR. ALDEN: I've heard of that, and I thought it
24 was two years, but it's a one year now?

25 SENATOR HUGHES: It's limited to twelve months;
26 that's one year. So, when your programs are two-year programs,
27 how do you propose to deal with that to meet the needs of the
28 welfare recipients?

1 MR. ALDEN: Well, my understanding is that each
2 college is adjusting to that time frame and has the ability to
3 start students halfway through or partially through a course in
4 order to expedite the completion of any skill.

5 And beyond that, Senator, I just don't know any
6 specific remedies that are in process.

7 SENATOR HUGHES: It's going to be a challenge to
8 you, so I hope that you will be ready to report back to us how
9 you're going to meet that challenge so that those welfare
10 recipients can be accommodated.

11 MR. ALDEN: I'll be happy to and be delighted to
12 report back and give you specifics.

13 SENATOR HUGHES: The other thing that I'm
14 concerned about is availability of child care, which is often
15 the absolute necessary help that recipients need to attend
16 college.

17 What's the current capacity of the community
18 colleges to offer child care services for students?

19 MR. ALDEN: Senator, I just don't know.

20 SENATOR HUGHES: I would suggest that you look
21 into that, too.

22 MR. ALDEN: I will.

23 SENATOR HUGHES: Sounds like I'm giving you a lot
24 of homework, and I'm not meaning to, but I really do care about
25 this because most of the welfare recipients in my area would be
26 people who would be faced with these kinds of problems and who
27 want to take advantage of the opportunity to attend community
28 college.

1 And you also need to find out if you have long
2 waiting lists for child care. I'm surprised that you don't know
3 that, or you should be concerned about it.

4 MR. ALDEN: I am concerned about it, Senator. I
5 just don't know the specific --

6 SENATOR HUGHES: You haven't gotten into that
7 yet?

8 MR. ALDEN: That's correct.

9 SENATOR HUGHES: I understand.

10 Are there any other kinds of priority needs that
11 you're aware of that the individual campuses have that you could
12 express to us today?

13 MR. ALDEN: Well, our priority -- my own personal
14 priority would be to continue with our acceleration of our
15 vocational or our educational training programs which is
16 adjusting to the changing technology age. And I think it's
17 essential to have the interfacing with the industry involved.
18 I'm thinking of Santa Monica Community College, where their
19 professors go out to the industry involved, the entertainment
20 industry primarily. Find out what is necessary, and then they
21 adjust their curriculum accordingly.

22 By the same token, the industry folks will come in
23 and help teach the students what is really necessary in that
24 area of business.

25 SENATOR HUGHES: Do you know what plans the
26 community colleges have in general to assist students who have a
27 four-year institution as their objective and ultimate goal?
28 What institutions do you know of within your system, and how do

1 they go about assisting students to reach that goal? Or do they
2 just leave them alone until they came say and say to you, "Now
3 I've taken X number of classes; what do I do to get into an
4 institution?"

5 Or is that one of your institutional concerns?

6 MR. ALDEN: It would be -- it is an institutional
7 concern.

8 And again, I'm going to have to take on
9 additional homework, which I'm very happy to do, because I am in
10 a learning process. I've been on the job now for seven months,
11 I think, six or seven months, and I never understood, and still
12 don't, the complexity of our community college system.

13 But I am learning, and I'd be happy to do some
14 more homework.

15 SENATOR HUGHES: One hundred seven institutions,
16 you've got a lot of homework to do.

17 MR. ALDEN: That's correct.

18 SENATOR HUGHES: Thank you very much.

19 CHAIRMAN BURTON: Senator Ayala.

20 SENATOR AYALA: Mr. Alden, some community
21 colleges are better prepared to sends their students to a
22 four-year college as others. Why is that, and what can we do to
23 help the others prepare students that would like to go to a
24 four-year institution from their community college upon
25 graduation from community college?

26 MR. ALDEN: We have discussed at some length -- I
27 don't know that this is an answer to your question -- but we
28 have discussed at some length a common course numbering system

1 that would presumably help each college or require each college
2 to offer the same type course for the same type of credit, and
3 coordinate that with Cal. State and with the university system
4 so that each college, if that course is taken, would receive the
5 same credit.

6 Right now, as I understand it, there are
7 variances in credits that are received for same course or
8 similar courses that are given.

9 That might be one step that we could take to help
10 the acceptance into four-year colleges.

11 SENATOR AYALA: Community colleges are like a
12 catch-all for students coming out of high school. Those that
13 are unable to pay the tuition or come from homes that are not
14 able to pay for college education, some that haven't cut the
15 cord with the parents yet, they can't get away to a four-year
16 institution.

17 We have all kinds of programs for terminal
18 students at that point if they prefer not to go on to a
19 four-year college, but I think we should be prepared to get
20 these students that would like to go to a four-year college
21 after graduating from community college. I think we should make
22 every effort to make sure that they're all taken care of.

23 I remember that Senator Rodda told me one day
24 that the community college is the pivotal position of any
25 increment of college work. There you can go for a college prep.
26 or you can get a vocation, but it's something that we need for
27 those students that want to go into a four-year college.

28 I'd like to see better effort in that direction

1 from the community colleges.

2 MR. ALDEN: All right, I'll take that back as a
3 direction.

4 CHAIRMAN BURTON: Senator Knight.

5 SENATOR KNIGHT: Mr. Alden, can you give me an
6 idea of how the California Community Board of Directors
7 interfaces with the local community college board of directors?
8 How do your policies interact with the local boards? What
9 happens if there is a difference of policies? Can you give me
10 some idea of that interaction?

11 MR. ALDEN: Since I've been appointed, we have
12 had three meetings -- with all these acronyms, even being at
13 Hughes I get confused -- but we have had joint meetings with the
14 boards, the executive directors of the boards of trustees of the
15 community colleges, and we plan one on May 14th in San Diego.

16 And I sense that there's a developing real sense
17 of cooperation and mutual exchange of information within the
18 system. And I have to think that that is going to promote a
19 better system and better performance at the college level.

20 SENATOR KNIGHT: Okay.

21 CHAIRMAN BURTON: Moved by Senator Ayala.

22 SENATOR AYALA: Yes, fight on. I'll move it.

23 SECRETARY WEBB: Senator Ayala.

24 SENATOR AYALA: Aye.

25 SECRETARY WEBB: Ayala Aye.

26 SECRETARY WEBB: Senator Hughes. Senator Knight.

27 SENATOR KNIGHT: Aye.

28 SECRETARY WEBB: Knight Aye. Senator Lewis.

1 SENATOR LEWIS: Aye.

2 SECRETARY WEBB: Lewis Aye. Senator Burton.

3 CHAIRMAN BURTON: Aye.

4 SECRETARY WEBB: Burton Aye. Four to zero.

5 CHAIRMAN BURTON: Mr. Alden, what I would suggest
6 is, before this is taken up on the Floor, is that either if you
7 can remember them, or maybe get together with Senator Hughes to
8 try to get some of the information to those questions. Because
9 after seven months on the Board, you shouldn't have all the
10 answers, but I think a little bit better feeling.

11 MR. ALDEN: All right, sir. It will be done.
12 Thank you.

13 CHAIRMAN BURTON: Thank you very much.

14 [Thereupon the Rules Committee
15 acted upon legislative items.]

16 CHAIRMAN BURTON: Mr. Fenimore.

17 MR. FENIMORE: Good morning, ladies and
18 gentlemen. I'm George W. Fenimore, appointee for continuing as
19 a public member of the California State Teachers' Retirement
20 Board. I've been on about four-and-a-half years at this point.

21 My background includes educationally
22 undergraduate Northwestern University, Harvard Law School, the
23 Executive Program at UCLA.

24 Business-wise, I've been associated with Ford
25 Motor Company, Hughes Aircraft Company, TRW where I was head of
26 their international operations, and Litton Industries, among
27 others.

28 I was married. My wife is now deceased. I have

1 three children, one of whom is an attorney; one of whom is in
2 social welfare counseling; another was a Major, a fighter pilot
3 in the United States Air Force.

4 SENATOR KNIGHT: What's that?

5 CHAIRMAN BURTON: That got him.

6 MR. FENIMORE: He flew F15s, sir.

7 SENATOR KNIGHT: Good airplane.

8 CHAIRMAN BURTON: This is just my own personal
9 opinion. It's got nothing to do with your confirmation.

10 I just think the retirement benefits for teachers
11 is just absolutely outrageous, especially those like --

12 SENATOR KNIGHT: Too low?

13 CHAIRMAN BURTON: God, yes. The teachers that
14 taught me, what is it, two percent they get? I mean, they
15 retired, and I mean, I don't know how they can live on it.

16 And I know we're the ones that have to set that,
17 not you, but it just seems to me that the teachers in their
18 retirement are woefully inadequate.

19 As people start looking to different jobs, and
20 they start looking at where they might be when they retire, it
21 would be enough to discourage people from being a teacher.

22 Any questions from Members of the Committee?
23 Senator Hughes.

24 SENATOR HUGHES: How do you feel about the
25 current statutory composition of the STRS Board.

26 MR. FENIMORE: The current staff of the Board?

27 SENATOR HUGHES: The composition of the Board.

28 MR. FENIMORE: It now includes a number of

1 teachers representing various teacher groups, organizations, a
2 banker, an insurance person, a public member, and the
3 constitutional officers.

4 I think there's a very good balance there. My
5 role, I think, as a public member is to represent not only the
6 teachers but the public at large, and to that extent I try to do
7 that.

8 SENATOR HUGHES: All right.

9 Elected officials represent the public at large.
10 Do you think some elected officials should be on that STRS
11 Board? If not, why not?

12 MR. FENIMORE: You mean such as the Controller,
13 the Treasurer?

14 SENATOR HUGHES: They're elected officials.

15 MR. FENIMORE: Yes, they are.

16 SENATOR HUGHES: I said elected officials. I
17 didn't say specifically what category.

18 CHAIRMAN BURTON: There are some on there as of
19 this year.

20 SENATOR HUGHES: No, I mean as voting members. I
21 mean as voting members.

22 MR. FENIMORE: Yes, I think they should vote.

23 Was that your question?

24 SENATOR HUGHES: No. Do you think that the ones
25 who are on there ex-officio should be voting members? Is that
26 what you're saying?

27 I asked if elected officials should be on it. I
28 didn't mean --

1 MR. FENIMORE: I agree that they should be, to
2 answer your question.

3 SENATOR HUGHES: Why?

4 MR. FENIMORE: Because I think they represent the
5 state as a whole, especially the Controller, especially the
6 Treasurer. They're responsible for the fiscal well being of the
7 state as well as for the Teachers' Retirement Fund, and they
8 should have an interest in that.

9 SENATOR HUGHES: How about a rank and file person
10 like Senator Burton or Senator Knight? They're just elected
11 officials.

12 CHAIRMAN BURTON: I'd rather Senator Hughes.

13 MR. FENIMORE: We would welcome his
14 participation.

15 SENATOR HUGHES: You wouldn't knock it if someone
16 else proposed it?

17 MR. FENIMORE: That is correct, yes.

18 SENATOR HUGHES: That's the most noncommittal
19 statement I've ever made.

20 What's your position on legislation? There are
21 two pieces of legislation, one on the Assembly side and one on
22 the Senate side. One by Senator Hayden, one by Assemblyman Knox
23 to phase out the investments by STRS and PERS in the tobacco
24 industry.

25 How do you feel about that?

26 MR. FENIMORE: Thank you. This has been a
27 subject of considerable controversy and discussion.

28 Personally, I'm not a smoker. We do have

1 investments in tobacco stocks, and we have designated a study to
2 be made and come back with a recommendation.

3 We've had -- Assemblyman Knox appeared before our
4 Board twice on this subject, and the issue is still under
5 discussion and will be dealt with as soon as we get our study.

6 SENATOR HUGHES: When is your study due?

7 MR. FENIMORE: I believe in a month or so.

8 SENATOR HUGHES: So, it's imminent?

9 MR. FENIMORE: Yes, it is.

10 SENATOR HUGHES: Thank you.

11 MR. FENIMORE: Thank you.

12 SENATOR KNIGHT: Mr. Chairman.

13 CHAIRMAN BURTON: Senator Knight.

14 SENATOR KNIGHT: What is your study going to
15 actually do? What are you trying to find out?

16 MR. FENIMORE: To determine whether or not, as I
17 see it --

18 CHAIRMAN BURTON: How much money they would lose
19 if they divest.

20 SENATOR KNIGHT: Based on what?

21 MR. FENIMORE: That's right. Whether we should
22 divest of our tobacco stocks.

23 SENATOR KNIGHT: Yes, but based on what?

24 MR. FENIMORE: Based on the cost and the future
25 of the tobacco industry.

26 I think Assemblyman Knox, as he appeared before
27 us, is concerned not with respect to the moral aspects of
28 tobacco, but the future with respect to the tobacco industry.

1 SENATOR KNIGHT: You're suggesting that the
2 government is trying to put the tobacco industry out of
3 business, regardless of what other businesses, industries, or
4 whatever they happen to be --

5 CHAIRMAN BURTON: Not as long as you're around,
6 they'll never go out of business.

7 MR. FENIMORE: I didn't say that, sir.

8 I said we're waiting for a determination, a
9 recommendation, with respect to whether or not the State
10 Teachers' Retirement Board should continue to hold its tobacco
11 stocks.

12 We have, it seems to me, a dual responsibility,
13 but primarily to protect the investments of the teachers. That's
14 what we're here for.

15 SENATOR KNIGHT: I understand, but you're also, I
16 gather, basing that decision on what the government is trying to
17 do to the tobacco industry, which is a legal industry.

18 MR. FENIMORE: That's correct.

19 Does that answer your question?

20 SENATOR KNIGHT: I don't know that it does, but I
21 guess I'll wait and see --

22 MR. FENIMORE: Well, as far as our consideration,
23 school is still out with respect to what our study will show and
24 what our position will be.

25 SENATOR KNIGHT: I'm just concerned about the
26 ground rules and the assumptions you make in laying out the
27 mechanism by which you conduct that study.

28 MR. FENIMORE: Our primary interest is to protect

1 those funds, because we have pressures from different directions
2 about certain types of stock all along the road, not just
3 tobacco.

4 One of the concerns that we have is that we don't
5 want to set a precedent just because we have pressure to dispose
6 of it.

7 SENATOR KNIGHT: You're getting pressure, and
8 that's why you're doing it.

9 But, for example, Phillip Morris has numerous
10 other businesses that are nontobacco.

11 MR. FENIMORE: That's correct.

12 SENATOR KNIGHT: Okay.

13 You know, this whole thing is a hyped thing that
14 just irritates me to no end.

15 CHAIRMAN BURTON: Senator Lewis.

16 SENATOR LEWIS: What percentage of the portfolio
17 right now is invested in stocks?

18 MR. FENIMORE: In stocks, about 62 percent of the
19 total investment, which is about 85 billion.

20 SENATOR LEWIS: And in the last five or ten
21 years, what was the high water mark in terms of percentage of
22 the portfolio invested in stocks?

23 MR. FENIMORE: I don't know the answer to that,
24 sir.

25 SENATOR LEWIS: Is the trend right now trending
26 up, or is it trending down?

27 MR. FENIMORE: To invest in stocks?

28 SENATOR LEWIS: Right, in terms of the percentage

1 for your entire portfolio.

2 MR. FENIMORE: The trend has been up, is up, to
3 invest more in stocks than in fixed income.

4 SENATOR LEWIS: There doesn't seem to be much
5 concern at this point in time of the market being at dizzying
6 heights?

7 MR. FENIMORE: We are always concerned about that
8 sir; yes, sir.

9 One response to that is, are we investing for the
10 long run or short run? And statistically, it appear that stocks
11 have out performed bonds over the years, and we're in for the
12 long run.

13 SENATOR LEWIS: I understand that. That's
14 certainly, over the long run, is the correct way to go.

15 What happens if there's a 25 percent correction
16 on the market from where you are right now?

17 MR. FENIMORE: We would suffer from that.

18 SENATOR KNIGHT: It started out early this
19 morning.

20 CHAIRMAN BURTON: What I want to do is commend
21 the STRS for over the year adhering to the McBride principles,
22 which you did on your own in the North of Ireland, and I want to
23 commend you for Jennifer, who does such a great job in getting
24 me to carry your legislation that I have no idea what it does,
25 but she explains it.

26 Moved by Senator Ayala. Call the roll.

27 SECRETARY WEBB: Senator Ayala.

28 SENATOR AYALA: Aye.

1 SECRETARY WEBB: Ayala Aye.

2 SECRETARY WEBB: Senator Hughes.

3 SENATOR HUGHES: Aye.

4 SECRETARY WEBB: Hughes Aye. Senator Knight.

5 SENATOR KNIGHT: Aye.

6 SECRETARY WEBB: Knight Aye. Senator Lewis.

7 SENATOR LEWIS: Aye.

8 SECRETARY WEBB: Lewis Aye. Senator Burton.

9 CHAIRMAN BURTON: Aye.

10 SECRETARY WEBB: Burton Aye. Five to zero.

11 MR. FENIMORE: Thank you, ladies and gentlemen.

12 CHAIRMAN BURTON: We think very highly of

13 Jennifer, enough so that we want to keep her.

14 [Thereupon this portion of the

15 Senate Rules Committee hearing was

16 terminated at approximately 11:05 A.M.]

17 --ooOoo--

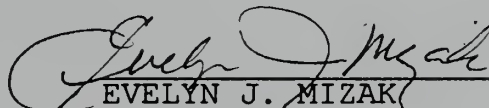
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APPEARANCES

MEMBERS PRESENT

SENATOR JOHN BURTON, Chair

SENATOR JOHN LEWIS, Vice Chair

SENATOR RUBEN AYALA

SENATOR TERESA HUGHES

SENATOR WILLIAM KNIGHT

STAFF PRESENT

GREG SCHMIDT, Executive Officer

PAT WEBB, Committee Secretary

NANCY MICHEL, Consultant on Governor's Appointments

WADE TEASDALE, Consultant to SENATOR LEWIS

FELICE TANENBAUM, Consultant to SENATOR HUGHES

JOSH LOWERY, Consultant to SENATOR KNIGHT

ALSO PRESENT

JOAN E. DENTON, Ph.D., Director
Office of Environmental Health Hazard Assessment

KRISTEN HAYNIE, Staff Consultant
California Association of Professional Scientists

STANTON GLANTZ
University of California at San Francisco
Scientific Review Panel

JODI M. WATERS, President
California Oxybusters

LLOYD J. WOOD, Inspector General
Youth and Adult Correctional Agency

IRENE RAYMUNDO, Member
Youthful Offender Parole Board

MIKE JIMENEZ, Executive Vice President
California Correctional Peace Officers Association

MAGGIE ELVEY
Doris Tate Crime Victims Bureau

1 VERRONDA MOLDEN

Minorities in Law Enforcement (MILE)

2 ARNOLD TORRES

3 Torres & Torres

INDEXPage

Proceedings 1

Governor's Appointees:

JOAN E. DENTON, Ph.D., Director
Office of Environmental Health Hazard Assessment 1

Background and Experience 1

Questions by SENATOR AYALA re:

Position on MTBE 2

Safeness of MTBE in Drinking Water 3

Questions by SENATOR LEWIS re:

Carcinogenicity of MTBE 5

Trade-off of Cleaner Air for
Polluted Groundwater 5

Time Table on Evaluating Effects of
MTBE in Drinking Water 5

Number of ppb Necessary for MTBE to
Affect Taste of Water 6

Questions by CHAIRMAN BURTON re:

Increased Exposure to Pesticide in
Lompoc 6

Problem of DBCP in Water Supplies 7

Witnesses in Support:

KRISTEN HAYNIE, Labor Relations Consultant
California Association of Professional Scientists 9

STANTON GLANTZ
University of California at San Francisco
Scientific Review Panel 9

Questions by SENATOR LEWIS re:

Risk Assessment of OEHHHA on Effects of
Power Lines or EMF 10

Motion to Confirm 10

Witness in Opposition:

JODI M. WATERS, President
California Oxybusters 10

Questions by SENATOR LEWIS re:

Familiarity with Problems of
Glenville Residents 12

Resumption of Testimony by MS. WATERS 13

Questions by SENATOR AYALA re:

MS. WATERS' Organization 14

Questions by SENATOR KNIGHT re:

Current Status of MTBE 15

Reason for Banning Boats with
Two-Stroke Engines 15

Committee Action 16

LLOYD J. WOOD, Inspector General
Youth and Adult Correctional Agency 17

Background and Experience 17

Questions by CHAIRMAN BURTON re:

Identification of Correspondence or
Communication that Leads to Investigation 18

Ability to Pick and Choose Investigations 19

Standard for Investigating 19

Witnesses in Support:

IRENE RAYMUNDO, Member
Youthful Offender Parole Board 20

Questions by SENATOR KNIGHT re:

Reporting Authority 22

Statements by SENATOR AYALA re:

Bill that Would Allow Inspector
General to Report Directly to Governor 22

Support for Work of MR. WOOD 23

Further Witnesses in Support:

MIKE JIMENEZ, Executive Vice President
California Correctional Peace Officers Association ... 23

MAGGIE ELVEY
Doris Tate Crime Victims Bureau 24

VERRONDA MOLDEN
Minorities in Law Enforcement (MILE) 25

Witness in Opposition:

ARNOLD TORRES, Advocate
Torres and Torres 25

Questions by SENATOR KNIGHT re:

Expected Qualifications
for Position of I.G. 30

Questions by SENATOR AYALA re:

Tenure in Office of I.G. 31

Questions by SENATOR AYALA of MR. TORRES:

Review of Investigative Reports
Prepared by I.G. 31

Lack of Awareness of Work 31

Background of Nominee 32

Statements by CHAIRMAN BURTON re:

Faulting Individual for Not Meeting
Unestablished Criteria for Job 33

Specific Instances where Nominee
Failed 35

Resumption of Testimony by MR. TORRES 35

Statements by CHAIRMAN BURTON re:

Dismissal of Executive Officer 38

No Proof that Dismissal Was Due
to Racism 40

Resumption of Testimony by MR. TORRES 40

Statements by CHAIRMAN BURTON re:

Irrelevancy of Firing 41

Statements by SENATOR AYALA re:

Familiarity with Circumstances Leading
to Firing of YOPB's Executive Officer 43

Unprofessionalism Shown by Governor's
Office Personnel 44

Resumption of Testimony by MR. TORRES 45

Statements by SENATOR AYALA re:

Background Check into Nominee 46

No Evidence of Discrimination 46

Resumption of Testimony by MR. TORRES 47

Questions by CHAIRMAN BURTON re:

Investigation into Corcoran Situation 48

Inability of I.G. to Investigate without
Approval of Agency Secretary 48

Discussion on Purview of Committee 50

Questions by SENATOR HUGHES re:

Clear Description of Rules and Regulations
that I.G. Must Follow to Initiate an
Investigation 51

Statements by SENATOR AYALA re:

Investigation by I.G. into Stockton
Youth Authority Incident 52

Questions by SENATOR KNIGHT re:

Investigative Experience 52

Access in Current Position to Persons
with Prosecutorial Backgrounds 53

Statements by SENATOR KNIGHT re:

Presumptuousness on Allegations against
Nominee without Proof 54

Requirement for I.G. 55

1 Statements and Questions by CHAIRMAN BURTON re:

2 Responsibilities of I.G. 55

3 Required Approval by Agency Secretary 56

4 Need for Change in Direction 57

5 Discussion of Authority of Position 57

6 Motion to Confirm 59

7 Committee Action 60

8 Certificate of Reporter 61

9

10

11

12

13

14

15

16

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P-R-O-C-E-E-D-I-N-G-S

--ooOoo--

CHAIRMAN BURTON: Next is Joan Denton, Director of the Office of Environmental Health Hazard Assessment.

DR. DENTON: Good afternoon, Mr. Chairman, Members of the Committee.

My name is Dr. Joan Denton, and I'm here for your consideration to the appointment of Director of the Office of Environmental Health Hazard Assessment.

This office is the smallest department within the California Environmental Protection Agency, but it's unique in that almost half of the approximately 125 employees have either one advanced degree or several advanced degrees in the area of toxicology or a related field of public health.

Our mission is simply good science. We protect and enhance public health and the environment by being the lead state agency charged with objectively evaluating or providing guidance on how to evaluate risks from chemicals in the environment. No other department in the state and, I would venture to say, in the country has a focused mission in this arena, coupled with the intellectual brain power to do it.

Since my appointment, we have promulgated, we have adopted 27 public health goals, and these have been forwarded to the Department of Health Services, who is using them to evaluate their maximum contaminant levels of these chemicals in water.

Also, last month our scientific review panel approved our health risk assessment for diesel exhaust. That

1 was after about eight years in the making.

2 This coming year, we're working on additional
3 public health goals, including one for methyl tertiary butyl
4 ether or MTBE. We will be continuing to implement Proposition
5 65, including developing a hazard identification document on
6 MTBE. We will be finaling guidance documents for use by risk
7 managers in performing risk assessment. And finally, we will be
8 conducting a public workshop this summer, which will be devoted
9 to emerging challenges that the California Environmental
10 Protection Agency will be facing in the next five to ten years.

11 On the one hand, I am very proud, and yet on the
12 other hand, I'm very humbled and yet honored to be considered
13 for this position. And I will be happy to answer any questions
14 that you may have about either me or about my office.

15 Thank you.

16 CHAIRMAN BURTON: How's the nun?

17 DR. DENTON: Well, well.

18 CHAIRMAN BURTON: She sent me a note and said she
19 would no longer pray for my soul if we didn't confirm you.

20 [Laughter.]

21 DR. DENTON: Senator, I read the same note, and I
22 didn't see that statement.

23 CHAIRMAN BURTON: She talks in tongues when she
24 speaks. Senator Ayala.

25 SENATOR AYALA: Ms. Denton, what is your position
26 on MTBE? Do you think it's safe in our environment?

27 I understand you spoke some place referring to
28 MTBE, and I don't know what your position was.

1 DR. DENTON: Senator, last year I actually spoke
2 before three legislative subcommittees on methyl tertiary butyl
3 ether. At that time, I was a staff scientist for Air Resources
4 Board.

5 I spoke about the air quality benefits of cleaner
6 burning gasoline, and I also addressed some of the issues
7 regarding MTBE and health effects, which we had been following
8 for months and months, and which was based on information from
9 the United States Environmental Protection Agency, the National
10 Academy of Sciences, the White House, the Health Effects
11 Institute, and so forth.

12 So, I was basically a staff scientist reporting
13 to the policy makers on information which was available then
14 about the health effects of cleaner burning gasoline, and what
15 was known about the inhalation, the air quality effects of MTBE.

16 SENATOR AYALA: What do you think of it now? Is
17 it safe?

18 DR. DENTON: I think essentially now what I
19 testified to last year, and that is that, as you know, there's a
20 risk assessment being done right now for California, California
21 specific. And the issue regarding MTBE is not one of air but
22 rather of water.

23 And the information that was available, and I'm
24 not aware of any information that's come out that's changed
25 that, essentially said that complaints which had been attributed
26 to MTBE, such as dizziness, eye irritation and so forth, there
27 was no real strong scientific evidence that that was occurring
28 because of exposure to MTBE. But the real issue was the

1 solubility of MTBE in the water, and that's something that the
2 state is continuing to assess.

3 SENATOR AYALA: As far as now, is it safe or is
4 it a health risk in water?

5 DR. DENTON: As far as we know, it's not a health
6 risk when you are exposed to it in the air. The concentrations
7 are way below what you would expect to see acute effects of
8 MTBE.

9 SENATOR AYALA: How about in the water itself,
10 the potable water?

11 DR. DENTON: In the water, the real issue seems
12 to be that you can taste and smell MTBE in the water before it
13 would be a potential health threat, but we're in the process of
14 setting some numbers by which we would be able to evaluate
15 concentrations of MTBE should they occur in the water and what
16 potential health threat they should be.

17 But the bottom line is that it's likely more a
18 taste and odor, a secondary effect, before you would see a real
19 acute or chronic health effect.

20 SENATOR AYALA: A lot of folks are over reacting
21 to MTBE?

22 DR. DENTON: I think in some cases yes, but I
23 also think that it's important to be aware of the chemical in
24 the environment, And to do the necessary scientific studies to
25 evaluate what, if any, there's a risk.

26 SENATOR AYALA: Thank you.

27 SENATOR LEWIS: Question.

28 In your professional opinion, do you believe that

1 MTBE is or is not a carcinogen?

2 DR. DENTON: I believe in my professional
3 opinion that MTBE is a weak carcinogen. There are chemicals
4 that are stronger, but there is evidence that it does, in
5 laboratory animals, that it is a weak carcinogen.

6 SENATOR LEWIS: Do you believe that the trade-off
7 in terms of cleaning the air versus whatever groundwater
8 pollution is taking place has been a net benefit in terms of
9 lowering cancer risk?

10 DR. DENTON: I think at this point that's true,
11 that the benzene reduction, and benzene is a known human
12 carcinogen, that was reduced by 50 percent, and that the benefit
13 to reducing those potential cancer cases which, from the air,
14 there is a benefit to using the gasoline.

15 But again, we're still in the process of
16 evaluating that.

17 SENATOR LEWIS: What's the time table on that
18 evaluation?

19 DR. DENTON: Well, there are a couple of things
20 that are going on. As I mentioned, we are going to be setting a
21 public health goal for MTBE. We're also developing a health --
22 a hazard identification document under Prop. 65.

23 The public health goal will be -- it's actually
24 out for public comment right now and will be completed by this
25 summer. The hazard identification document will be completed
26 some time this year, and at the same time, a separate activity
27 is going on. A risk assessment is being developed by the
28 University of California. And that is due to be at the

1 Governor's -- on the Governor's desk by January first of next
2 year.

3 So, all of this information will be coming in.

4 SENATOR LEWIS: How many parts per million would
5 it normally take for the average human before they taste it in
6 drinking water?

7 DR. DENTON: Senator, I believe that this is
8 something that the Department of Health Services right now is
9 developing a secondary health standard for MTBE based upon odor
10 and taste.

11 And I believe for those people who are
12 particularly sensitive to MTBE, I believe their number is 5 ppb.
13 So, people who are sensitive may taste as low as 5 ppb.

14 CHAIRMAN BURTON: Are you familiar with the
15 problem down in Lompoc, where, I guess, there's been increased
16 exposure to pesticide, where there have been certain
17 illnesses -- cancers, respiratory diseases. Do you know about
18 that little pocket of problem?

19 DR. DENTON: Yes, I do, Mr. Chair.

20 CHAIRMAN BURTON: Do you want to comment on it,
21 what either your office could do or could be done?

22 DR. DENTON: We have been involved with Lompoc
23 for several years. We developed a report on the health of the
24 residents down in the Lompoc area.

25 The draft final report was issued last
26 December. We had a public comment period, several public
27 workshops, and that document is now being revised to be released
28 within a couple of weeks with sort of the final conclusions

1 about the Lompoc area.

2 In addition, we are working with a work group
3 down there which is working on the next steps to try to isolate
4 what might be the causes of increased illnesses in that area.

5 CHAIRMAN BURTON: Are you familiar with what's
6 going on in the other parts of the valley? DBCP is a pesticide
7 that seems to have seeped into the water supplies up and down
8 the valley.

9 DR. DENTON: Yes, I am, Mr. Chairman.

10 CHAIRMAN BURTON: I hear that could really --
11 disaster may be too big a term -- be a real problem.

12 DR. DENTON: We're in the process of again
13 developing a numerical quantitative number which can be used as
14 a public health -- which will be a public health goal for the
15 Department of Health Services to re-evaluate their maximum
16 contaminant level, and we are doing that now. So, sometime this
17 year, we will be getting a document out on the numerical value
18 of what would be the -- what's called the diminimus risk level;
19 what level would there be ten to the minus six risk of DBCP in
20 ingestion.

21 CHAIRMAN BURTON: Are you talking about like to
22 be used in the future? Won't the proof of the pudding be in the
23 eating, when a lot of kids take ill because of this stuff in the
24 water?

25 DR. DENTON: Mr. Chair, I don't know that
26 children are particularly a sensitive group. I know that it's
27 mostly a reproductive toxicant.

28 CHAIRMAN BURTON: We won't be talking about

1 children then, I guess.

2 DR. DENTON: Well, I also know that it has some
3 carcinogenic effects.

4 I guess the bottom line is that that development
5 of that information, the setting of a number, is going on right
6 now.

7 CHAIRMAN BURTON: But isn't it too late? The
8 stuff's in the water. In other words, it seeped in, I guess,
9 through the groundwater supply, in theory anyway, as a result of
10 the usage.

11 So, you would do a study as to what the danger
12 level would be in the water. And then, if the water's got too
13 much of it, you close down the wells?

14 You're kind of the cart. The horse is out of the
15 barn, so you're really not trying to prevent something. You're
16 trying to figure out how to deal with the cards that were dealt
17 you after game started.

18 DR. DENTON: Right, Mr. Chairman, and I need to
19 again, first of all, we're a risk assessment group. We aren't
20 risk management. Also, we are not the lead agency on
21 pesticides. That's the Department of Pesticide Regulation.

22 But DBCP is on our list of PHGs to develop a
23 public health goal for, which will be provided to the Department
24 of Health Services. Risk management is in their arena or in
25 DPR's arena.

26 CHAIRMAN BURTON: The Department of Pesticide
27 Regulation, where is that? In Health or Ag?

28 DR. DENTON: No, that's within Cal EPA. Cal EPA

1 has six agencies.

2 CHAIRMAN BURTON: Any other questions? Pleasure
3 of the Committee?

4 Supporters?

5 Just identify yourself.

6 MS. HAYNIE: Hi, my name is Kristen Haynie. I
7 represent the California Association of Professional Scientists.
8 I'm a labor relations consultant. We represent about 2300 state
9 scientists, many of which are employed at Dr. Denton's
10 department.

11 We are here to support her appointment, and
12 primarily for the scientists at OEHHA, it's been remarkable the
13 changes that Dr. Denton has already accomplished in six months.

14 She was gracious enough to meet with us five
15 months ago and ask our opinion about what needed to be done, and
16 has implemented many of those suggested changes.

17 The primary positive thing I've heard from the
18 scientists since we've heard of the confirmation hearing being
19 rescheduled, or scheduled so soon, was that OEHHA has returned
20 to public health as their mission.

21 Thank you.

22 CHAIRMAN BURTON: Next.

23 MR. GLANTZ: Hi, Stan Glantz. I'm a member of
24 the scientific review panel, which was mentioned earlier. In
25 fact, I was appointed by this Committee.

26 I would also like to testify in support of Joan.
27 I've known her longer than either of us care to admit. And I
28 think after many years of political hacks being in charge of

1 OEHHA, we now have a scientist. I think that it's a real step
2 forward.

3 I think the actions that this Committee took in
4 refusing to confirm Rick Becker led to a real turn-around at the
5 Agency, and it's now dealing with science again.

6 And I think the diesel report, which she
7 mentioned, which was just approved, re-established California's
8 leadership in environmental issues.

9 CHAIRMAN BURTON: Thank you.

10 SENATOR LEWIS: Question.

11 Doctor, I was just curious. In terms of your job
12 regarding risk assessment, does anything dealing with power
13 lines, or EMF, or anything like that, come under your
14 jurisdiction?

15 DR. DENTON: As far as I know, Senator, we
16 haven't. I could get back to you on that. It could have been
17 before my tenure, but I'm not aware of that.

18 SENATOR LEWIS: Move.

19 CHAIRMAN BURTON: Moved by Senator Lewis. Call
20 the roll.

21 Excuse me, is there opposition?

22 MS. WATERS: My name Jodi Waters. I'm the
23 President of the California Oxybusters. We represent over
24 60,000 Californians, and our issue is MTBE.

25 Last year, Joan Denton testified before a number
26 of subcommittees, as she had said, and I will quote: "MTBE is
27 one of the most tested chemicals and is safe."

28 You have the notes there from Dr. Melman, who has

1 refuted her testimony all the way through.

2 This chemical was not tested the way they claimed
3 it was. They knew it was unsafe. One of her remarks during the
4 hearings was, "Hindsight is 20-20. We never thought to look at
5 the water."

6 Excuse me. If she is going to be head of our
7 environment, she better look at the whole picture and not leave
8 out the water. When it comes to have people been harmed, can
9 you taste MTBE in the water, does it harm you when you are
10 drinking it, I will tell you right now, yes.

11 When you're breathing it in the air, I have a
12 statement here from a tanker driver who was exposed to MTBE from
13 a few seconds to a few minutes on daily basis, where he's
14 extremely ill. He is now permanently disabled, and the
15 statements from his doctors have stopped him from working
16 altogether.

17 The people in Glenville have MTBE in their water
18 at high levels. The people in Santa Monica have MTBE in their
19 water. There isn't a waterway in the State of California that
20 isn't currently contaminated with MTBE.

21 We asked for a ban on this chemical, but instead,
22 we were fought with testimony saying that oh, it's perfectly
23 safe, and there's over 70 health studies, none of which have
24 ever been peer reviewed.

25 And Joan Denton was aware of this. She got up
26 and she testified. A little while ago she talked about the
27 White House reports that she had taken into consideration that
28 she skewed.

1 If she is going to be in charge of the
2 environment, of protecting us, she should be held accountable
3 for what she's done with the testimony in regards to banning
4 MTBE.

5 The people in Glenville, California, their
6 properties are worthless. They're extremely ill. Out of 135
7 residents of the town of Glenville, 65 of them have MTBE in
8 their water. Out of that 65 people, you have 10 people that
9 have a lupus-type disease. All of them have skin rashes.
10 Forty-five of them who never had asthma before now have asthma
11 from breathing this. Fifteen people have the same kind of
12 cancer. You have three people who have had brain infections and
13 are having grand mal seizures. This is from drinking MTBE in
14 the water.

15 We have doctors' reports, and we have now health
16 studies from Dr. Broughtbar in Los Angeles. He has seen over
17 400 people.

18 SENATOR HUGHES: I'd like to ask you, I just want
19 to know the location of Glenville.

20 MS. WATERS: It's 35 miles east of Bakersfield,
21 up in the Sierras, in the foothills.

22 CHAIRMAN BURTON: Senator Lewis.

23 SENATOR LEWIS: I wanted to ask Dr. Denton, are
24 you familiar with Glenville? Have you looked into that?

25 DR. DENTON: Yes. Actually, again, this was when
26 I was working for the Air Resources Board. And the monitoring
27 of MTBE in the Glenville water supply was done by another
28 agency. So, as that information became available, there are

1 some -- I think there's one or two private wells there that are
2 highly contaminated with MTBE, and people have had to stop using
3 the water.

4 MS. WATERS: It's not one or two wells. I was
5 talking to the people in Glenville today.

6 The Agency, John Newmans came out and they
7 retested. They're finding even higher levels in more and more
8 wells each time they go in there to test.

9 One of the statements that Ms. Denton made was
10 that we reduced benzene by 50 percent. I'd like clarify that.
11 Benzene was in our gas at 1.5 percent; it's now in our gas at
12 one percent. By my calculations, that's a third, not a half.

13 One of the things that wasn't looked at, that
14 should have been looked at, at the time that MTBE was put into
15 the gas, was the synergistic effect. So, you have a known
16 carcinogen such as benzene that's being synergized by MTBE.

17 The animal studies that have been done on MTBE
18 show that it's much more dangerous a chemical than anyone had
19 ever thought it to be. The human tests that are now coming out,
20 this chemical works on your body the same way HIV does. It
21 breaks down your immune system. It also breaks down your
22 central nervous system where you have loss of memory and motor
23 movement, things like that.

24 This chemical shouldn't have been allowed, but
25 yet she came forth at every single subcommittee, and she
26 testified as to how safe it was: we have all the tests; all the
27 work has been done.

28 It wasn't done, and she clearly knew that none of

1 the tests that she was testifying about had been peer reviewed.
2 Nor was the Bushy Run Study brought into the matter, which is a
3 test that was done by the oil industry that showed, clearly
4 showed, the bad health effects of MTBE. That was never brought
5 in.

6 I urge this Committee not to confirm. We need to
7 have somebody in charge of our environment who cares about the
8 environment, who isn't out for special interest groups, but for
9 all of the people.

10 I have four children. What legacy am I giving
11 them by MTBE being in the water, when it's in every waterway?

12 Now we're going to ban boats because we have MTBE
13 in the gas.

14 The air reduction did not quantify us using this
15 chemical at all.

16 Thank you.

17 SENATOR AYALA: May I inquire, the organization
18 you represent is what?

19 MS. WATERS: California Oxybusters. We're a
20 grassroots organization. We collected over 122,000 signatures
21 from the people of State of California who did not want this
22 chemical used. We wanted it to be put on hold until the studies
23 were done. That's basically all we asked. Don't ban it
24 forever, but ban it until the studies were done.

25 And over and over again, we had our public
26 agencies coming out, testifying as to how great and how safe it
27 is. Now we've got it in the waterway, in every waterway in the
28 State of California. Your children, your grandchildren, your

1 relatives are drinking that water.

2 CHAIRMAN BURTON: Not for you, but just generally
3 I think what happened is, a lot of agencies that looked at MTBE
4 were looking at it as it applied to the air. And the agency
5 that was supposed to be looking at it as it applied to the water
6 never looked at it, which was not the Air Resources Board.

7 I'll move approval. Call the roll.

8 Oh, you had a question?

9 SENATOR KNIGHT: I was just going to ask what the
10 status of MTBE is right now?

11 CHAIRMAN BURTON: The Mountjoy bill had a study
12 of MTBE and other additives.

13 SENATOR KNIGHT: But at the present time, we're
14 still using it in gasoline?

15 MS. WATERS: Yes, yes.

16 DR. DENTON: Yes, Senator.

17 SENATOR KNIGHT: Is that true? Is that why we're
18 banning boats on lakes, because of the gasoline and the MTBE in
19 the gasoline getting into the water?

20 MS. WATERS: Yes.

21 DR. DENTON: Senator, these two-stroke engines
22 that are used in boats are pretty inefficient, and a lot of
23 gasoline, I think it's 30 percent of the gasoline, can be
24 spilled, just unburned into the water. So, some of the Regional
25 Water Boards are looking very closely at removing and banning
26 recreational water boats.

27 CHAIRMAN BURTON: The two-stroke.

28 DR. DENTON: Two-stroke engines; that's correct.

1 CHAIRMAN BURTON: Not the fancy boats like we
2 have.

3 MS. WATERS: We have new two-stroke engines that
4 are coming out that are -- the technology is getting better; the
5 companies are working on it.

6 In the meantime, they are banning boats, not just
7 the water agencies. There's a bill right now before the
8 Assembly to ban all two-cycle engines on all waterways in the
9 State of California. And the reason behind it is MTBE.

10 The Water Districts realized the problem with
11 MTBE, that they cannot be delivering water to consumers that has
12 high amounts of MTBE in it.

13 The taste threshold is between two and ten parts
14 per billion on MTBE.

15 CHAIRMAN BURTON: Call the roll.

16 SECRETARY WEBB: Senator Ayala.

17 SENATOR AYALA: Aye.

18 SECRETARY WEBB: Ayala Aye.

19 SECRETARY WEBB: Senator Hughes. Senator Knight.
20 Senator Lewis.

21 SENATOR LEWIS: Aye.

22 SECRETARY WEBB: Lewis Aye. Senator Burton.

23 CHAIRMAN BURTON: Aye.

24 SECRETARY WEBB: Burton Aye.

25 SENATOR HUGHES: Hughes Aye.

26 SENATOR KNIGHT: Aye.

27 SECRETARY WEBB: Hughes Aye, Knight Aye. Five to
28 zero.

1 CHAIRMAN BURTON: Tell the nun.

2 DR. DENTON: I will. Thank you.

3 CHAIRMAN BURTON: How's she doing?

4 DR. DENTON: Very well, Mr. Chairman.

5 CHAIRMAN BURTON: You do have a family
6 resemblance.

7 [Thereupon the Committee acted
8 upon legislative agenda items.]

9 CHAIRMAN BURTON: Lloyd Wood, Inspector General,
10 Youth and Adult Correctional Agency.

11 MR. WOOD: Good afternoon, Senator Burton and
12 Members.

13 I'd like to take this opportunity to thank you
14 for allowing me to appear before you again. A few years ago I
15 appeared before the Committee and was fortunate enough to be
16 confirmed for a position on the Youthful Offender Parole Board.
17 This time I'm before you as a nominee for the Inspector General,
18 for YACA.

19 You have the resume on my background. The only
20 item I would highlight on is, I began in law enforcement at the
21 lowest possible rank and worked myself up through the ranks,
22 going to college part-time until I got my degrees.

23 I spent 13 years in my career as a police chief
24 and five years as a city manager. In May of last year, I was
25 appointed by the Governor to be the Inspector General for the
26 Youth and Correctional Agency.

27 That Agency basically has the responsibility for
28 the oversight of the investigative functions for the YACA

1 agencies. We also do evaluations on wardens and superintendents
2 who have been in place for five years or more. And finally, we
3 do other audits and investigations as requested by the Secretary
4 of the Agency or Members of the Legislature.

5 The Inspector General office itself is only
6 three-and-a-half years old. My predecessor began it in one
7 office in the YACA organization.

8 In the last year, we have now expanded and have
9 our own offices in a different location in a neutral area.
10 We've started and have hired our first permanent employees.
11 We've created a brochure describing the services of the
12 Inspector General. And in that brochure also is a 1-800 number
13 for those to call.

14 Over last year, we have reviewed 112 cases that
15 we've monitored. That's a 400 percent increase over the
16 previous year, and we've also made some 150 recommended changes
17 in the some of the policies and operations. I'm guessing about
18 145 of those have been adopted, so we have made some headway.

19 To my right is a fellow Board Member from the
20 Youthful Offender Parole Board, Irene Raymundo.

21 That's all I have at this time. I would be happy
22 to entertain any questions.

23 CHAIRMAN BURTON: Questions, Members of the
24 Committee?

25 How would you identify correspondence and
26 communications to provide information that would qualify for
27 opening an investigation?

28 MR. WOOD: Generally speaking, if an employee or

1 a person, or friend of an employee feels that some portion of an
2 investigative process has not been done properly, they will
3 write the Inspector General a letter requesting that we review
4 it.

5 Once we receive their letter, then we obtain
6 copies of any information from the Department dealing with that
7 specific incident, and if it meets the criteria, we'll continue
8 to investigate that until we get an answer for the employee and
9 the Secretary of the Agency.

10 CHAIRMAN BURTON: Some people have been
11 concerned, and I'll say this in the pejorative sense, but you
12 have somewhat of a partisan background in whether or not you
13 would be -- as do all of us here except, of course, Colonel
14 Knight, who is just above partisanship -- but basically, you
15 know, there's a concern expressed that you might pick and choose
16 who you go after.

17 MR. WOOD: No, that would not be true. So far,
18 the cases that we've accepted, I don't think you'll find any
19 trend that shows that we're picking and selecting.

20 The Inspector General, in some respects, is a
21 very easy job. We receive the complaints. We investigate them,
22 and we present facts to the Secretary or to the Legislature, and
23 they make the final decisions on them.

24 We have, to my knowledge, turned down very few,
25 and only because they didn't meet a criteria.

26 CHAIRMAN BURTON: What's your standard on
27 investigation? What's the standard? You get a letter. How do
28 you determine credibility?

1 MR. WOOD: We don't determine credibility. We
2 take it on face value. And then we proceed to look at it after
3 that.

4 CHAIRMAN BURTON: Anybody's doing anything wrong,
5 you look at it?

6 MR. WOOD: We look at it.

7 CHAIRMAN BURTON: How do you determine whether --

8 MR. WOOD: The first place we go is to see if
9 it's been handled by the Department. If the Department has
10 taken any action at all, then we review that action. After we
11 review the action, if we feel that the investigative process was
12 not done properly, or some other procedure has not been
13 followed, then --

14 CHAIRMAN BURTON: How about if they haven't taken
15 action?

16 MR. WOOD: If they haven't taken any action, then
17 we would request they take action. If they do not want to take
18 action, then we would ask the Secretary to have us go ahead and
19 investigate it ourselves.

20 CHAIRMAN BURTON: Are there witnesses in support?

21 MS. RAYMUNDO: Support.

22 Mr. Chairman and Members of the Senate Rules
23 Committee, thank you for the opportunity to share with you my
24 experiences while working with Mr. Wood. I'm here to support
25 his confirmation as Inspector General.

26 My name is Irene Raymundo. I reside in San
27 Diego, California, and am an appointee to the Youthful Offender
28 Parole Board. I have served in the San Diego Police Review

1 Board and the San Diego Detention Facilities Advisory
2 Committee.

3 I am here today to support Mr. Wood and to share
4 with you my experience while working with him during his tenure
5 on the YOPB.

6 For approximately a year-and-a-half, I consider
7 myself fortunate to have worked with Mr. Wood. We conducted
8 hearings for youthful offenders to determine their progress and
9 their parole readiness. As you're aware, youthful offenders,
10 male and female, come from all social-economic walks of life,
11 and all racial and ethnic origins.

12 Mr. Wood applied the laws and the regulations in
13 a fair and impartial manner, regardless of the ward's
14 social-economic status, race, creed, sexual orientation --

15 CHAIRMAN BURTON: How many white wealthy wards
16 are there in CDC?

17 MS. RAYMUNDO: In the YA, you mean? We do have
18 some.

19 CHAIRMAN BURTON: Some, yeah.

20 MS. RAYMUNDO: But the majority, you're right.
21 The majority are not. Normally the counties do a diversion
22 program for them because of the attorneys and so forth.

23 During our working relationship with Mr. Wood, he
24 did not prejudge. He consistently made decisions based on the
25 facts and evidence before him. And his professional and calm
26 demeanor in conducting the hearings was appreciated and
27 expressed by the staff in the YA, the wards' parents, as well as
28 the victims. His tactful approach and considerate tone was also

1 especially appreciated by the victims' organizations and victims
2 themselves.

3 Mr. Wood distinguished himself as a member of the
4 YOPB and proved himself to be a consummate professional, and it
5 was a pleasure to work with him. I found Mr. Wood to be man of
6 integrity, compassion and purpose. I believe these attributes
7 will serve him well as Inspector General, and I urge and
8 strongly -- I strongly urge this Committee to confirm Mr. Wood
9 as Inspector General.

10 If I can answer any questions, I'll be glad
11 to.

12 CHAIRMAN BURTON: Next witness in support.

13 SENATOR KNIGHT: Question.

14 CHAIRMAN BURTON: Senator Knight.

15 SENATOR KNIGHT: As the Inspector General, who do
16 you report to?

17 MR. WOOD: I report to the Agency Secretary.

18 SENATOR KNIGHT: Directly?

19 MR. WOOD: Yes, sir.

20 SENATOR AYALA: On that score, Mr. Chairman, to
21 follow up, that's a problem, that the Inspector General reports
22 to the Agency Secretary.

23 I think the other investigations, we've had
24 internal investigations, lacked a lot of substance. They really
25 did.

26 I don't know what happens after he turns in his
27 report to his superiors. I have a bill that will allow the
28 person in that position to report to the Governor directly and

1 bypass all these bureaucrats in between.

2 I might say that since Mr. Wood took over that
3 position, it's like a breath of fresh air. So many good,
4 competent reports have been coming in that I really support the
5 work that he does. For the first time, I believe we're getting
6 some real evidence of the internal investigations of the
7 Department of Corrections.

8 He has some real good investigating processes in
9 progress today, and I'm getting some very good reports. I'm the
10 Chairman of the Senate Committee on Prison Management. I do
11 work very closely with Mr. Wood and others. I might say that
12 it's been quite an improvement since he took that office as
13 opposed to what it was prior to him being there before.

14 He has no staff, by the way. He's doing it all
15 on his own. So, I'm happy you asked him that question.

16 SENATOR KNIGHT: I'm happy to have been the
17 straight man for Senator Ayala.

18 CHAIRMAN BURTON: Next witnesses.

19 MR. JIMENEZ: Good afternoon, Mr. Chairman and
20 Members. My name is Mike Jimenez, and I'm the Executive Vice
21 President of the California Correctional Peace Officers
22 Association.

23 While I'm not here today to give the endorsement
24 of CCPOA, we generally avoid endorsing somebody for this type of
25 office, I am here to speak as an individual, and I only use my
26 title as a reference so you know that I do have interaction.

27 CHAIRMAN BURTON: Identification purposes only.

28 MR. JIMENEZ: I do have interaction with Mr.

1 Wood. I have found him to be reasonable and objective in his
2 approach on all the issues that have been brought to him.

3 I think that I agree with you, Senator Ayala,
4 that there are many problems within the investigative policies
5 and practices of the Youth and Adult Correctional Agency. I
6 think among those problems, though, Mr. Wood is one of things
7 that are right about fixing that problem.

8 I encourage an aye vote. While we don't see
9 eye-to-eye on several issues, I still support him as an
10 individual, and I agree with the lady that testified before me.
11 I believe that he is a man of integrity, and that he will do a
12 lot to correct some of the ills of those investigations.

13 Thank you very much.

14 CHAIRMAN BURTON: Witnesses in support.

15 MS. ELVEY: Hi, I'm Maggie Elvey, and I have a
16 personal experience, being thrown into the world of victims in
17 1993, when my husband was murdered by two juveniles. I now have
18 the misfortune of attending yearly Youthful Offender Parole
19 Board hearings, and was fortunate enough to have Mr. Wood in
20 1996 at one of the hearings on one of the youths.

21 I feel that he was very -- had a very controlled
22 meeting and was very knowledgeable. And it's a scary thing for
23 victims to be sitting in these meetings every year, not knowing
24 the people. He showed no prejudice or disrespect to either
25 side. He was fair to both of us. He was sincere. He was
26 thorough, and he was truly concerned. He made it a lot easier
27 to be there and to go through this every year.

28 CHAIRMAN BURTON: Thank you, ma'am.

1 Other witnesses in support.

2 MS. MOLDEN: Hello to Members of the Committee.

3 My name is Verronda Molden. I'm here on behalf of Regis Lane,
4 Executive Director of MILE, Minorities in Law Enforcement.

5 We are here to strongly support the confirmation
6 of Mr. Lloyd Wood. We have had the opportunity to meet with
7 him, and we have had become very impressed with his law
8 enforcement record in the community, as well as his knowledge on
9 the issues pertaining to Corrections.

10 Our organization is a youth advocate organization
11 dedicated to helping California's urban youth. Our goal is to
12 secure a significant reduction in the disproportion of arrests
13 and incarceration rates among the urban youth.

14 Our agency is representative of the Los Angeles
15 Black Peace Officers Association, the Latino Peace Officers
16 Association, the California Womens Peace Officers Association,
17 the California Correctional Peace Officers Association, and the
18 Asian Peace Officers Association.

19 Again, we strongly encourage that you confirm his
20 appointment. Thank you.

21 CHAIRMAN BURTON: Other witnesses in support?
22 Witnesses in opposition?

23 MR. TORRES: Arnold Torres, partner with Torres
24 and Torres. We're a public policy firm, and we occasionally
25 will come in and testify on nominations if, in fact, they raise
26 a major concern to us in the work that we do. We do a
27 tremendous amount of pro bono work on a number of issues, and
28 the work that we've done recently on crime and gang prevention

1 leads us to this hearing before you today.

2 I've appeared before this Committee on two other
3 occasions, testifying in opposition to Dr. Molly Coye, the
4 Director of the Department of Health Services. She's no longer
5 with the administration. She lasted about approximately two
6 years after the Senate confirmed her. We felt vindicated with
7 that record.

8 And the second was Mr. Norm Shumway, the nominee
9 to the Public Utilities Commission, who we had worked with and
10 against during our years in Washington, D.C., when he was a
11 Congressman.

12 So, I provide you this background to underscore
13 to you that the process of confirmations is not new to us. We
14 did a tremendous amount of testifying before appointments by the
15 Reagan administration when I was in Washington, representing the
16 country's largest Hispanic civil rights organization, the League
17 of United Latin American Citizens. So, we don't take our
18 testimony lightly, and we understand and respect this process.

19 Oftentimes, when minorities come before you, they
20 come to testify about discrimination, and they come to raise the
21 fact that they have been wronged by nominees, by
22 administrations. There is some concern on that front, but I
23 want to begin by indicating to you the major reason for our
24 concern.

25 In the last three to four years, the Department
26 of Corrections -- and it's good that the lobbyist for the
27 Association of Correctional Officers is here. I was quite
28 surprised that they would testify on a nomination for an

1 Inspector General, since that has never been the case with the
2 Inspector General at the Department of Justice at the United
3 States federal government level. So, I'm very surprised and
4 taken somewhat aback. I can only attribute that to, perhaps,
5 some interest in the politics of this nomination at this point.
6 However --

7 CHAIRMAN BURTON: Or the respect for the nominee.

8 MR. TORRES: Absolutely, the undying -- having
9 nothing to do with their position, respect for the nominee,
10 without a doubt.

11 We have been reading for the last three to four
12 years a tremendous amount of concerns with the work of the
13 Department of Corrections and some of their officers. There
14 isn't -- every other month, there's a major article in major
15 newspapers throughout this state about abuse, excessive use of
16 force.

17 Whether it happens or not, it's vitally important
18 to understand what it is does to the psyche and to the attitude
19 of people in a democratic society. Law enforcement people,
20 whether they work in an institution or outside in a uniform, are
21 the most powerful people in a democratic society. They carry a
22 badge and they carry a gun. They can use them and they can
23 answer the questions after the fact.

24 It is so imperative that their respect and their
25 work be beyond reapproach. When it is not, democracy is under
26 attack. It begins to hurt it immensely.

27 We are very troubled by the fact that there have
28 been very, very celebrated cases with Corcoran and other

1 institutions in this state along those lines.

2 We look at the Department of Justice at the
3 federal level, the background of the Inspector General there.
4 Former prosecutor, Michael Bromwitz, federal prosecutor for at
5 least 15 to 20 years prior who his position as Inspector
6 General. He has a tremendous amount of prosecutorial
7 experience.

8 It is the same thing with the Office of the
9 Inspector General -- Office of Professional Responsibility
10 within the Department of Justice. They have a counsel, and that
11 counsel also has extensive legal background.

12 We are very troubled by the fact that,
13 regrettably, Mr. Wood does not have that background.

14 When we testified and brought it to the attention
15 of Ms. Justice, the Governor's appointments secretary, she was
16 somewhat taken aback that we would even raise that as the
17 standard of what the Inspector General of this Agency should
18 have in terms of background.

19 We believe this is absolutely imperative.
20 Clearly, Senator Ayala's two bills, SB 1913 and SB 1978, are two
21 very, very public overtures on the part of the Senator to try
22 and professionalize the operations of that office. Why? Not
23 because he's a lawyer. He's not. But because it is imperative
24 that that office operate at an extremely high level.

25 Let me share with you a memo that was written by
26 my staff to me as of April the 7th. "On April the 7th, we found
27 out that one person doing an investigation for that office
28 happened to be the janitor of that institution, receiving no

1 special training." They had followed up on that.

2 SENATOR AYALA: He was what?

3 MR. TORRES: He was the janitor. It was
4 mentioned that in one situation, a maintenance employee was
5 doing the investigation.

6 Now, if this information is wrong, we'd be more
7 than happy to give you the staff people that we discussed this
8 with so that there are no repercussions to those individuals.
9 But because this is an extremely -- because this has received
10 political and partisan concerns on the part of this
11 administration, I would say that there will be some
12 repercussions for some people who do not support Mr. Wood, or
13 anyone that gives us information that would hurt Mr. Wood's
14 possibilities of being confirmed by this Committee, or forwarded
15 by this Committee as confirmation by the Senate.

16 So, with due respect to you, Senator, I am
17 surprised that anyone would consider the work being done at that
18 office at this time to be a massive improvement. Over what?

19 If we're talking that the standard prior to Mr.
20 Wood was nothing, then I would say virtually anybody could make
21 some improvements in the operations of that office.

22 But clearly your bill, 1913, if there was a
23 go-getter in that position, and there was someone who understood
24 what their responsibilities needed to be, SB 1913 should not be
25 necessary. This is an extremely common sensical piece of
26 legislation. The Inspector General should take the initiative
27 to take those types of actions. Yet, that is not the case
28 whatsoever.

1 So, we are extremely troubled by that lack of
2 background. It is going to be imperative that, as our number of
3 inmates grow in our state prisons, and the confrontations
4 between correctional officers and others and inmates continue to
5 escalate, which clearly, it's a track record that's underscoring
6 that left and right, regardless of what the CCOA [sic] may
7 testify.

8 These are serious problems. Why? Because these
9 are human beings confronting human beings. No one's perfect,
10 and mistakes will be made.

11 SENATOR KNIGHT: Excuse me.

12 Can you give me what the qualifications are that
13 you expect of an Inspector General?

14 MR. TORRES: I expect at a minimum, Mr. Knight,
15 Senator Knight, that they should have at least a prosecutorial
16 background, as Mr. Bromwitz, currently Office of Inspector
17 General, Department of Justice, has.

18 Whether you worked for a D.A.'s office, or you
19 have worked in private practice and you litigated, you've got to
20 have someone who's done investigations. You've got to have
21 someone who actually knows that process of investigative work.

22 With all due respect to Mr. Wood's background,
23 that simply is not underscored in the positions that he's held.

24 SENATOR KNIGHT: That's not a requirement, but
25 that's your belief as to what the requirements should be for
26 that position?

27 MR. TORRES: That's true. So, there are no
28 qualifications.

1 SENATOR KNIGHT: None stated.

2 MR. TORRES: That's right, there are none stated
3 for that position even in the legislation that created this
4 office.

5 All I'm saying is that I'm not aware that the
6 Office of Inspector General at the Department of Justice has any
7 written requirements as well, but the job requires this type of
8 background.

9 Now that, by all means, is open to some debate,
10 but I would think that common sensically, that's the kind of
11 person you want, because that's the kind of things they're going
12 to have to be doing. A person who has that kind of background
13 allows them to do their job much easier.

14 SENATOR AYALA: Mr. Wood, how long have you been
15 in that particular office now?

16 MR. WOOD: One year, sir.

17 SENATOR AYALA: You made a number of
18 investigations, and you have turned the report in to the proper
19 authority; correct?

20 MR. WOOD: Yes, sir.

21 SENATOR AYALA: Have you had a chance to review
22 these reports? And if you have, have you found them short? Do
23 you feel they're not doing the job?

24 Have you seen the reports he's turned in?

25 MR. TORRES: No, sir.

26 SENATOR AYALA: How can you judge a person on the
27 strength of his background if you're not aware of the kind of
28 work he's doing?

1 MR. TORRES: I would judge it quite simply. If I
2 was to have reviewed those reports and come to you with an
3 opinion, I would have been absolutely guilty of hypocrisy.

4 I am not a prosecutor. I'm not a D.A.

5 SENATOR AYALA: You're doing it now.

6 MR. TORRES: No, I'm not. I'm simply saying that
7 the position of Inspector General should carry with it people
8 who have backgrounds that allow them to do their job.

9 SENATOR AYALA: Before you start underestimating
10 his ability, you should know whether he's doing the job or
11 not. His background may be not that of investigator. He's
12 been a policeman, in law enforcement all his adult life, I
13 guess.

14 And I'm not trying to defend him. I'm just
15 defending the report he turned in to me. I think they're a heck
16 of an improvement over what I got before from the other
17 investigating forces. So, he's quite an improvement. He must
18 know what he's doing, because no one questions what he's doing.

19 I don't have to defend him because he can defend
20 himself.

21 I don't understand how you can criticize him, not
22 knowing the kind of work he's doing today, one year he's been in
23 office.

24 MR. TORRES: Mr. Ayala, I don't think that our
25 criticism is of Mr. Wood individually at this point.

26 What we're saying is that he is being confirmed
27 for the position of Inspector General of this Agency, the
28 Correction Agency. The Inspector Generals in all other

1 positions up to now, at least in the federal government and the
2 experience that we've had at that level, underscore the fact
3 that they do have requisite backgrounds that allow them to do
4 their jobs and carry out their responsibilities.

5 SENATOR AYALA: Let me just give an example.

6 At the highest office of this country, the
7 President, who is the Chief of all the armed forces, never
8 served one day in the military.

9 MR. TORRES: Senator, I respect that opinion.
10 I'm glad that others find it somewhat humorous.

11 SENATOR AYALA: I'm not trying to be funny.

12 MR. TORRES: The fact is that this position is
13 not one that's elected by the general public. This is a
14 position that's confirmed by the Senate.

15 CHAIRMAN BURTON: If I could, and I don't
16 disagree with the thrust of what you're saying, but if you've
17 got no problem with him personally -- I don't know whether I've
18 got a problem with him personally or not -- it would have been
19 helpful to us -- you're an attorney?

20 MR. TORRES: No, sir.

21 CHAIRMAN BURTON: You're an advocate. I'm sorry.
22 I assumed you're an attorney, so I apologize.

23 It would have been helpful to us, and Senator
24 Ayala did -- who, I might say, which is not violating a
25 confidence, did not necessarily start out as the biggest fan of
26 the gentleman before us -- but he reviewed the complaints. He's
27 very familiar with what's going on there, and has been very
28 unhappy with what's happened in the past.

1 But if you don't have a beef with the guy, but
2 it's that we -- and that may have been a mistake of the
3 Legislature at some point in the past -- did not set up criteria
4 for this position. So, you can't fault this person for not
5 fulfilling the criteria that's not there, but if, in fact, he's
6 been doing the job -- and I don't know if he's doing job or not,
7 although I'm much of Senator Ayala's opinion, because I focus on
8 different things, he focuses on this -- but then, whether or not
9 he went to law school, didn't go to law school, whether he did
10 this.

11 In fact, he's a cop, so in theory he should know
12 how to investigate. I would assume that there probably should
13 be some attorneys in the office of the Inspector General that
14 would give the legal advice on what happened.

15 So, I think that the basic fault that you seem to
16 have, if it's not with him, is with the fact that the initial
17 legislation did not set up, which it probably should have,
18 criteria that we do in some things, you know, at least three
19 years as something, and four years of something else.

20 I'm just wondering, do you have any --

21 MR. TORRES: Yes, we have. There were two major
22 points that we're raising. One, we wanted to raise the ones
23 that we've been discussing now.

24 CHAIRMAN BURTON: We'll see if you guess where I
25 was going.

26 Do you have any specific things? In other words,
27 this guy could have been a lawyer, and could have been the D.A.
28 of San Francisco County, and if he did bum job, that would do no

1 good. Do you have any specific places or instances where you
2 believe he fell short of the mark?

3 MR. TORRES: Our second point goes to our concern
4 with some actions that Mr. Wood undertook when he was with the
5 Youthful Offender Parole Board.

6 Let me finish these points, then I'll go into the
7 second.

8 I certainly appreciate and understand where you
9 and Senator Ayala are going in response to our testimony. We're
10 not saying to you that the problem with the nominee is as a
11 result of legislation that wasn't specified enough.

12 What we're saying is that this Legislature has
13 had serious problems with the direction of Agency for some time
14 now. It has problems with people within other smaller
15 departments within this Agency.

16 Our concern is that when you have that type of
17 history with regards to the question and doubt and concerns with
18 the direction being provided, now that there's somebody else in
19 the position, and previous Director is gone, clearly, any
20 improvement over what was done in the past is going to be cited
21 as somewhat -- probably a little bit better than what it really
22 actually is, when there are really no standards that we're
23 looking at.

24 All we're saying is that when you consider a
25 person for this position, recognizing to some extent on the part
26 some of you today, saying that maybe we should have been more
27 specific, what we're saying is that when a person coming into
28 this position now, at a time when there's so much controversy,

1 so many difficulties within agencies, both at Corrections and
2 the Youth Authority, we just simply believe that there are other
3 people who can certainly do this job much better. That is the
4 concern we have with regards to the first point.

5 The second point, and why the second point -- why
6 our first point becomes even more troublesome for us, is, I
7 seriously doubt that many of the -- and I certainly could be
8 wrong; it wouldn't be the first time -- but I seriously doubt
9 that the minorities that have come before you today, I do not
10 believe that they would have come up here to testify in support
11 of Mr. Wood if they had not been contacted by the Governor's
12 Office and told that we were testifying and raising our
13 objections to him, and that we happened to be a Latino, and that
14 we had raised our letters and our concerns to the Governor's
15 Office directly.

16 So, with all due respect to their testimony, I
17 think they have done what they were asked to do. I think that's
18 very, very good, but I think it's important that this Committee
19 puts that in perspective.

20 Our second point deals with the fact that we
21 first came to Mr. Wood -- Mr. Wood first came to our attention
22 with regards -- as a result of the Corrections problems, and
23 then as a result of the firing of an individual at the Youthful
24 Offender Parole Board.

25 We raised a number of concerns, and we discussed
26 it directly with the Governor's Office. The Governor's Office
27 told us that the Chairman of that Committee, of the Youthful
28 Offender Parole Board, Senator Presley, was fully aware that the

1 Executive Officer had been fired, and that he had no problems
2 with that.

3 Well, they told me to go ahead and ask Senator
4 Presley. I asked Senator Presley directly. Senator Presley
5 informed me that at no time had he been informed that the
6 gentleman had been dismissed by the Governor's Office. And if
7 he had been told that he was about to be dismissed, the Senator
8 said that there was no grounds from his side as to why the
9 gentleman was about -- why the gentleman had been dismissed.

10 Senator Presley also informed me that Mr. Wood
11 had asked that this individual's record be placed on the agenda
12 for a meeting of the Youthful Offender Parole Board.
13 Regrettably, Mr. Wood did not come to that hearing that day. I
14 believe he had a personal difficulty.

15 But Senator Presley confirmed to me that had he
16 come, and had in fact this been a discussion, the votes were not
17 there to remove the Executive Officer. In fact, according to
18 Senator Presley, he was not aware that there was one other vote
19 besides Mr. Wood's effort to remove the Executive Officer from
20 that position.

21 Now, Senator Presley is conspicuously absent from
22 this process. He has not sent a letter of support, yet there is
23 somebody else from the Commission, from the Youthful Offender
24 Parole Board that has testified in his support, a person who's
25 also going to be renominated to serve on that Board again.

26 Now, not casting aspersions on anyone, that is
27 too much. That is too much of a coincidence. Enough said.

28 So, I think the concern is very, very much a

1 legitimate concern on our part with what's going on here. When
2 you couple, in our opinion -- and we could have an honest
3 disagreement between us today -- the job that the Inspector
4 General should be doing, the type of background that we believe
5 that they should have, with what we firmly believe, and do not
6 take lightly, is actions that, in our opinion, are unfair
7 towards minorities.

8 Thirty percent of the inmates -- more than thirty
9 percent of the inmates are Latinos in Corrections. More than
10 thirty percent of the correctional officers are Latinos.

11 I know that some will say that Mr. Wood's best
12 friends are Latinos. I understand that he has Hispanic
13 grandchildren.

14 But that does not speak to the example that I
15 have written about in our letters that you have copies of that
16 we sent to the Governor's Office. It does not speak to the fact
17 that we firmly believe that there was a problem in this
18 instance.

19 CHAIRMAN BURTON: With all respect, if either he
20 is the best friend of some Latinos, or some Latinos are his best
21 friends, his grandchildren are Latinos, and then you balance
22 that off against the fact that either he didn't like a guy and
23 got the guy canned, and that guy either happened to be a Latino,
24 or because he was Latino, that doesn't mix with me.

25 I can see how, and I'm not defending him, but I
26 can see how a person might want to get rid of an Executive
27 Director. Having been on a commission, I've wanted to do it
28 myself, but that might have been something that shouldn't have

1 been done, or something that was done on a personal basis in a
2 fit of pique.

3 I don't think one would necessarily relate he got
4 rid of him because he was Latino.

5 MR. TORRES: Let me put it in this context.

6 I think that as this state grows, and as more
7 Latinos get into professional jobs of being Executive Directors
8 of agencies within government, et cetera, it's going to be
9 pretty difficult to raise the example that I've raised and
10 attribute to it the concerns that I have.

11 However, when it comes to state government and
12 the State of California to this day, there are very few Latinos
13 that ever get to these positions, let alone an appointee of this
14 Governor.

15 This gentleman was an appointee by this Governor.
16 In fact, this gentleman was not the first choice of Senator
17 Presley to select. And yet it was this gentleman who the
18 Governor's people told Mr. Presley, we think this is a better
19 person for you to appoint.

20 Now, the whole thing revolves around the fact
21 that he was a Latino. Our concern is that if there were a lot
22 of other Latinos in the state system, I'd say, just like you
23 said, Senator, hey, you can't help but step on one. But that's
24 not the case when it comes to positions.

25 CHAIRMAN BURTON: No, my point is, and I think
26 we're getting somewhat far afield from whatever the issue is
27 here -- which seems to be more of a macro issue than the micro
28 issue here -- is that a guy got fired, rightly or wrongly, but I

1 think he might well have been fired, rightly or wrongly, black,
2 Latino, Asian, or me. That's the point I'm making.

3 In other words, I don't think the guy got fired
4 for being a Latino. I don't know. He might well have been, but
5 I think that's kind of a quantum leap, assuming, unless he
6 disowned whatever parent provided him with Latino
7 grandchildren.

8 So, I don't know if that's necessarily fair, but
9 I think the point is that he was put in this job.

10 I've got a couple questions that I do want to
11 ask.

12 MR. TORRES: I would just conclude that, to
13 bring it back to your topic, as you said that you felt that we
14 were somewhat afar.

15 You know, I underscored in the beginning, Senator
16 Burton, that we do not come before this Committee often. It's
17 not -- the issue of discrimination is not something that we
18 throw out every time a Latino is canned. That's just not the
19 case.

20 I believe as you I believe, there are times when,
21 regardless of who would have been there, the person deserved to
22 get canned.

23 CHAIRMAN BURTON: Or not.

24 MR. TORRES: I'm simply saying to you that in
25 view of the fact that we discriminate ourselves when it comes to
26 bringing issues like this to this Legislature, whether it's
27 before this Committee or any committee of the Legislature, both
28 the Assembly and the Senate, we think that we have an extremely

1 high standard when we come and we say: this is a problem.

2 Our analysis of this problem, and we researched
3 this stuff quite extensively, we reach no other conclusion but
4 the one that we're sharing with this Committee today. We do
5 believe that that firing was because of the ethic background of
6 the individual.

7 We coupled that concern with our first point,
8 that when you have somebody in that position that has to be
9 driven more by prosecutorial standards -- and yes, prosecutors
10 are very discriminatory in many cases -- but when you have, in
11 our opinion, a problem already, and you've got standards that
12 are not as high as they should be, regardless of whether it's in
13 the legislation or not, this sends a red flag to us that compels
14 us to come before you and ask that his nomination not be
15 confirmed by this Committee.

16 CHAIRMAN BURTON: This may or may not be a
17 rhetorical question.

18 Had he been a lawyer, D.A. or assistant D.A. for
19 years, was on the Board, fired the Latino. He's here before us
20 now to be Inspector General. What's the opposition? That he
21 fired somebody for racial bias?

22 In other words, the two things are irrelevant.
23 If he fired a guy for racial reasons, if he was an ex-Chief
24 Justice of the Supreme Court, in my judgment he would not be
25 getting my vote.

26 If we want to get into the janitor doing the
27 investigation, but if he was, quote, unqualified, or at least
28 not professionalized as you see it, but he hired this person and

1 went to the mat with the Governor to get a Latino in there, then
2 he would all of a sudden be qualified.

3 MR. TORRES: I would say to you that when we come
4 before any committee of the Legislature because discrimination
5 is something that people throw around all the time, there is no
6 way that I would come before this body unless I had absolute
7 evidence. If I had absolute evidence, I would advise the
8 Executive Officer who was fired to file a lawsuit against the
9 state. That's the point that I'm raising to you.

10 But I can't come in here and say, our right, that
11 this man committed discrimination against an individual. I
12 believe that based on the analysis that we did, there is enough
13 question there that has us -- that we feel compelled to bring it
14 to your attention.

15 Now, when you have that background of behavior,
16 coupled with where the position is going --

17 CHAIRMAN BURTON: But they're not relevant.

18 MR. TORRES: Of course they are.

19 CHAIRMAN BURTON: You're saying that you have a
20 guy who may well have fired somebody on a racial basis, and
21 because he isn't a prosecutor, it's a bad deal. But if he's a
22 prosecutor, it's okay?

23 MR. TORRES: No, it would never be okay. But I'm
24 simply saying to you, Senator, that you wouldn't today say to
25 me, if I had even more evidence, I'm not going to approve the
26 guy. I have to have something in a court of law. I don't have
27 that evidence in front of me.

28 CHAIRMAN BURTON: You haven't really put anything

1 in front of us except your supposition. You haven't, have you?

2 MR. TORRES: I think that I have made an
3 extremely compelling argument about what the position is. In
4 view of all the problems that we're having in the Corrections
5 institution in this state, I mean, I think that's unbelievable
6 problems there, and I think that speaks to itself.

7 CHAIRMAN BURTON: You think he's incapable of
8 dealing with them.

9 MR. TORRES: I believe simply this, that there
10 are many other people who are better positioned. That's the
11 point.

12 CHAIRMAN BURTON: I'm sure there are.

13 SENATOR AYALA: First of all, Mr. Torres, you
14 should have been an attorney. You do an excellent job.

15 MR. TORRES: I don't know. The Chairman didn't
16 seem to think that I had a very compelling argument.

17 CHAIRMAN BURTON: But you did a good job with
18 it.

19 SENATOR AYALA: I know for sure that the
20 gentleman you referred to, the Board asked him to come before
21 them. And Mr. Wood wasn't there because I understand he had a
22 wife who was ill at the time.

23 This gentleman was called, and he was given time
24 to straighten out because they had some problems with this
25 individual. After that time of the extended time frame was
26 performed, he was called into the Governor's Office.

27 Mr. Wood says he had nothing to do with that. I
28 assume that that's true. He went before this lady, I've never

1 met her, the appointments secretary for the Governor. And he
2 was fired by her.

3 MR. TORRES: That's right.

4 SENATOR AYALA: Now, I don't know what authority
5 that lady has to fire someone that's not under her jurisdiction,
6 unless the Governor gave it to her.

7 He reports back to Senator Presley, who's the
8 Chairman of the Commission. Senator Presley deserved better
9 treatment than that. I think it was so unprofessional by Ms.
10 Justice or the Governor, if he was behind this, to fire this
11 individual without informing the Chairman of that Commission,
12 Senator Presley.

13 Presley was not aware of the fact that this
14 individual was going to get fired. I think that the lady
15 indicated that later, that Presley was not aware of the fact
16 that he went in to see her about something, and he came out
17 without a job. He reports back to Presley and says, I'm gone.

18 He was the Chief of Staff for Senator Presley. I
19 think it's elementary courtesy, dictated by the administration,
20 to notify Senator Presley, and they didn't.

21 To that extent, I agree with you. But from then
22 on, I don't quite agree with what you've said, besides those.
23 Those are accurate statements that you made. I think the
24 administration owes Senator Presley an apology because they were
25 so unprofessional in the way they did it. And we can't control
26 that.

27 But they were having problems with this
28 individual's performing, but they gave him the extended time.

1 And between the time that the extension was given, he was called
2 into the Governor's Office and he was fired by this appointments
3 secretary, who, again, I don't know where she got her authority.
4 I guess Governor gave it to her.

5 But it's unprofessional to treat a Chairman of a
6 commission, appointed by the Governor, in that fashion. That
7 much, I would agree with you.

8 MR. TORRES: I just give this as a concluding
9 statement, and then you can query Mr. Wood and he can defend
10 himself in response to my comments.

11 I believe -- again, as I've said, I've been
12 involved in so many of these types of situations that I seldom
13 ever lend our name to supporting someone unless we do our own
14 analysis of what the problem is.

15 I believe there was a very serious problem with
16 the way the gentleman was dismissed. I think that in our
17 opinion, there is no doubt that Mr. Wood had something to do
18 with it, because he had asked that the item be placed on the
19 agenda. That's a confirmation, in our opinion, that there was a
20 problem there.

21 There are other people that we spoke to at this
22 Youthful Offender Parole Board that I wish we could share with
23 you, but then we'd be compromising them, and you know that there
24 is a lot of retaliation in the way the system works.

25 We checked out Mr. Wood's background in Pomona.
26 We received a lot of concerns with people that we spoke to there
27 that said that there was pattern of making disparaging remarks
28 about Latinos. We spoke to people in the City of Pomona that

1 did confirm to us that there were disparaging remarks made of
2 Latinos on several occasions by Mr. Wood.

3 SENATOR AYALA: I also did that, and I found no
4 problems with the Council lady, who happens to be Hispanic.
5 They had no problems while he was Chief, and also City
6 Administrator. I looked into it.

7 In fact, I've got to tell you a little story
8 quickly. I ran into the gentleman at the airport in Ontario
9 here about three months ago, and he was in civilian clothes.
10 We started a conversation. He says he was a sergeant in the
11 Pomona P.D. I asked him what he thought of Mr. Wood.

12 He said, "Why, he's the one that gave me my
13 advancement. I'm really thankful," and that gentleman was a
14 black person.

15 So, he was grateful to Mr. Wood that he promoted
16 him to sergeant. I hope he was qualified, by the way, not
17 because he was black, or brown, or purple, but he owed that to
18 Mr. Wood.

19 I was checking him out in my district.

20 So, you might have a lot of problems here with
21 Mr. Wood's confirmation, but they're all just hearsay, giving no
22 evidence.

23 This is not court of law, but I think that before
24 we can fire someone, we shouldn't be like the administration.
25 We should have something concrete to do it on.

26 MR. TORRES: I'm glad that that is the standard
27 that this Committee has. It does not appear that that was the
28 standard that was applied when the Executive Officer was

1 dismissed.

2 My concluding comment is that, you know, a lot of
3 damage has been made to this individual. I don't think that's
4 fair.

5 But I ask you now look at the bigger picture as
6 well. And the bigger picture is the fact that I believe that
7 the Inspector General position in government is one of the most
8 important positions in government that we have today. If they
9 do their job well, they hold government accountable on a
10 day-to-day basis. If they don't do their job well, then you've
11 got a much more serious problem of accountability on behalf of
12 government.

13 And if Mr. Knight and the Republican Party is
14 concerned about government, then I would think that they would
15 be extremely concerned about the necessity, the absolute
16 necessity of making sure that government is held accountable.

17 I do not feel, again, in concluding, that
18 Mr. Wood is the best person for this position for the reasons
19 that I've stipulated. It would be my hope that this Committee
20 would agree.

21 However, he serves at the pleasure of the
22 Governor. Perhaps we will have a new Inspector General and
23 maybe we can deal with that issue at another time.

24 Regrettably, we will not be able to deal with the
25 reputation of the Executive Officer who was dismissed, in our
26 opinion, phenomenally unfairly.

27 Thank you very much.

28 CHAIRMAN BURTON: Mr. Wood, is your office

1 looking into the Corcoran situation?

2 MR. WOOD: No, sir. We have not been asked to do
3 that.

4 CHAIRMAN BURTON: Jesus! Wouldn't it be
5 something that would happen on your own motion by reading the
6 newspaper?

7 MR. WOOD: We're governed by the policies and
8 procedures that are approved by the Agency Secretary.

9 When the Corcoran process happened, it was prior
10 to me coming here. But the fact was that there were so many
11 other agencies investigating it, that they did not have the I.G.
12 investigate it, and they actually removed their own internal
13 affairs people from investigating it, and allowed it to continue
14 with the federal and local agencies.

15 CHAIRMAN BURTON: First of all, you said you
16 didn't go in because nobody asked you. Now you tell me you
17 didn't go in because other people were there. Which was it?

18 MR. WOOD: First, we were not asked to go in at
19 all.

20 CHAIRMAN BURTON: Do you have to be asked if you
21 read the paper? You have to be asked? The Inspector General
22 can't look into something on their own motion?

23 MR. WOOD: Not without the approval of the
24 Secretary, nothing of that magnitude.

25 SENATOR AYALA: That's the problem we have today.
26 Unless he's told to investigate something --

27 CHAIRMAN BURTON: Then you've got almost a
28 worthless job.

1 SENATOR AYALA: I've got a bill that would
2 correct that.

3 CHAIRMAN BURTON: Is he going to sign it?

4 SENATOR AYALA: He didn't sign the last one, a
5 similar bill.

6 CHAIRMAN BURTON: If you can't look into a
7 department unless the department says you can look into us,
8 that's beautiful.

9 MR. WOOD: If the Secretary approves it, we get
10 many things --

11 CHAIRMAN BURTON: If you can't look into
12 something without one of the people who's going to get maybe
13 nailed, saying you've got to look into, then there's no reason
14 even to have you. Because he has you look at whatever he or she
15 wants you to look at.

16 I'm not saying that it's your fault. It's
17 somebody's fault.

18 MR. WOOD: As I understand it, and I'm probably
19 out of my league, but it's the Agency Secretary's position to be
20 the oversight for all of these units.

21 CHAIRMAN BURTON: The purpose of an Inspector
22 General is to be your own oversight. Then maybe it's good pay,
23 but it's not a pretty strong position, because the Inspector
24 Generals that have been created in the federal, I mean, the
25 reason they're there is to look at an agency. To look at what's
26 going on. Find out if they're screwing up.

27 It took for years to get an I.G. They had them
28 for every agency, and then to finally get one for the Pentagon,

1 it took years because the Pentagon had the clout to stop it.

2 But it'd be like saying to have an Inspector
3 General for the IRS, but the heads of the IRS doesn't want
4 anybody to looking at the way they do business, and he never
5 gives his approval.

6 Senator Knight.

7 SENATOR KNIGHT: That's all very well and good,
8 but that's something that I think needs to be cleared up
9 legislatively. I don't think that's germane to the job at hand.

10 CHAIRMAN BURTON: Yes, because it's almost like,
11 what do we need the job for if that's the way it works.

12 SENATOR KNIGHT: Is that within our purview, to
13 eliminate the job?

14 CHAIRMAN BURTON: It's within our purview not to
15 confirm if somebody's sitting in front of me, yes. That's why
16 he's here.

17 I'm not blaming him for it. I told him that I
18 was not.

19 My decibel level is not aimed at Mr. Wood. It
20 ain't his deal, but it's aimed at the process where it's like
21 you have an Inspector General to look at the Senate, but they
22 can't look it unless we say they can look at it.

23 SENATOR KNIGHT: I had some other questions.

24 SENATOR HUGHES: On the same, you said on the
25 federal level, the Inspector General was really independent to
26 do what they wanted to do, to look at the agency.

27 I know that there's an Inspector General on a
28 local agency in Southern California, and there is no job

1 description.

2 Is there a job description, and rules and
3 regulations in this position that clearly indicates what
4 Mr. Wood can or cannot do, with or without approval?

5 That's my question.

6 MR. WOOD: The legislation allows us to have
7 oversight into investigative processes, to evaluate wardens, and
8 to do other audits and investigations as requested by the Agency
9 Secretary or Members of the Legislature. And all of this is
10 based on the approval of procedures adopted by -- drafted by the
11 Inspector General and approved by the Agency Secretary.

12 SENATOR HUGHES: But it says that the Agency,
13 what you just said, that the Agency Secretary has to approve.

14 MR. WOOD: Yes.

15 SENATOR HUGHES: Or the Legislature. The other
16 part you said, or a Member of the Legislature or the Legislature
17 directs you to do --

18 MR. WOOD: Can make a request.

19 SENATOR HUGHES: A Member, any Member.

20 CHAIRMAN BURTON: If some Member of the
21 Legislature wrote you a letter and said look at whatever, then
22 you've got to do it? Or do you need somebody else's
23 permission?

24 MR. WOOD: Basically it still has to go by the
25 Agency Secretary.

26 CHAIRMAN BURTON: A little gap in the law.

27 SENATOR AYALA: Mr. Chairman, I asked to have an
28 investigation at the Stockton Youth Authority. A correctional

1 officer allegedly used three cans of pepper spray on one of the
2 kids. He ended up in the hospital.

3 Three months later, nothing's done because the
4 Director or the acting Secretary of the Agency didn't authorize
5 him to go ahead.

6 Finally I said, I want you to do it now, and he
7 completed the investigation partially within two or three
8 weeks. But they've been sitting on him because that's the way
9 law reads. It's a joke.

10 CHAIRMAN BURTON: That's what I was saying.

11 Senator Knight.

12 SENATOR KNIGHT: Thank you, Mr. Chairman.

13 Back to the issue at hand, recognizing your
14 concerns and the concerns of all of us as to the authority,
15 given the responsibility of the I.G., but there have been some
16 accusations by the gentleman who spoke against Mr. Wood, and I,
17 too, was under the impression that he was an attorney. I don't
18 what gave me that impression. Maybe it was intentional, maybe
19 it wasn't.

20 CHAIRMAN BURTON: He never said he was.

21 SENATOR KNIGHT: Oh, I know he didn't say he was
22 an attorney.

23 The position of I.G., you as a police chief, you
24 did not have any occasion to do any investigation or consort
25 with your I.G. at the time as you were a police chief,
26 Mr. Wood?

27 MR. WOOD: Well, as a police chief, in my first
28 department I created the Internal Affairs Bureau, as there was

1 not one before I got there. And both of those reported directly
2 to me.

3 When I reached my third department as a chief,
4 the Internal Affairs reported to a captain. I transferred that
5 so it reported directly to me, so I had control over all of the
6 investigations, that they all went through me and did not go
7 through a captain.

8 I've also in my experience been the captain of
9 the Detective Bureau, so I've had extensive investigative, and
10 oversight, and contact with Internal Affairs.

11 I'm old enough, I was around when some of these
12 first things were created, like the Police Officers' Bill of
13 Rights, and some of those. I was there at the beginning.

14 SENATOR KNIGHT: So, in your organization today,
15 you do have people with prosecutory capabilities, experience,
16 that do the investigations?

17 MR. WOOD: We have access. We don't prosecute.
18 We present the facts to the Agency Secretary, who then
19 recommends adverse action be taken. We make our
20 recommendations, and that type thing.

21 Primarily, we do have access to attorneys that
22 advise us as we go through the process. Most of my people that
23 I hired, which is not many, I think we have three or four is all
24 I have, those people are our management people that are equipped
25 to do audits. I have one ex-military I.G. that works for me.
26 Another person who's been in charge 50-some auditors at one
27 point in time. And a third person I have is a man who has
28 extensive investigative background and teaches investigations to

1 college and police officers.

2 So, I've got the good grounds. I have the
3 referral of attorneys to work with me. I have one attorney at
4 all times that is available to work with me and review the
5 reports.

6 SENATOR KNIGHT: That's the extent of your
7 staff?

8 MR. WOOD: At this time, yes, sir.

9 SENATOR KNIGHT: And you've been there for one
10 year.

11 CHAIRMAN BURTON: How many employees?

12 SENATOR KNIGHT: About three or four.

13 CHAIRMAN BURTON: No wonder he had to use a
14 janitor.

15 MR. WOOD: There's no janitor ever did
16 investigation in this department.

17 SENATOR KNIGHT: A lot of accusations have been
18 made here, and some of them sometime ago. I would suspect that
19 if there was any discrimination a year or so ago, or at least
20 over year ago, that that should have been taken up at the time.
21 To bring that up today, and other issues such as janitors
22 conducting the investigation without any proof, I think, is
23 rather presumptuous on an individual's part to degrade the
24 character of the individual that we're trying to approve today.

25 I have been an I.G. within the military. And the
26 I.G. within the military does not have to be under the JAG or
27 even associated with the JAG.

28 So, the requirements for an I.G. I think are a

1 little bit different in the fact that that should be an
2 organization and an individual that is open, that has the
3 ability to accept complaints from anybody, regardless or
4 independent of chain of command, and be able to assess and
5 evaluate those complaints, and do with them what is necessary to
6 satisfy that complaint.

7 CHAIRMAN BURTON: I want to read this thing, and
8 I've got some real problems, and they're not necessarily with
9 you. They're with what this system is.

10 Now, in our binder, it says, I.G. responsible for
11 reviewing department policy and procedures for conducting
12 investigations and audits of investigatory practices and other
13 audits, and investigations of Corrections, Youth Authority,
14 Prison Terms. Youthful Offenders, the Corrections, as requested
15 by the Secretary of Youth and Adult, or a Member of the
16 Legislature pursuant to the approval of policies to be developed
17 by the I.G. with approval of the Secretary.

18 Now, I'm not reading the statute. I'm reading a
19 summary, but that means to me that conceivably we gave statutory
20 authority for you, and I think you almost should have been able
21 to do something if you read about it in the paper. But if a
22 Member of the Legislature wrote a letter asking you to look at
23 something, you could do it.

24 But then it further says, policies developed by
25 the I.G. with the approval of the Secretary, which means the
26 Secretary had to approve your policies, not had to approve your
27 investigations, unless the policy he approved said, "We won't
28 investigate unless you approve."

1 Is that how it works?

2 MR. WOOD: That's how it works.

3 CHAIRMAN BURTON: That isn't what the law said.
4 That allowed the Secretary not to have you look at anything that
5 might embarrass him or her.

6 Again, this isn't you.

7 MR. WOOD: I understand, Senator.

8 CHAIRMAN BURTON: Make believe you're O'Brien.

9 MR. WOOD: One of the exiting philosophies at the
10 time was that the department themselves should have the
11 opportunity to correct whatever problem there was.

12 It's on that basis we were -- and the one at
13 Stockton that Senator Ayala was talking about, we were
14 restricted from going out because the policy was, or the theory
15 was, let the department do it first instead of us investigating
16 it.

17 Since time has passed now, the new Secretary has
18 now ordered us to go investigate that case, and we have.

19 CHAIRMAN BURTON: I'll tell you what my
20 inclination is.

21 I haven't read Senator Ayala's legislation, and I
22 don't necessarily want to hold anybody hostage, but I wouldn't
23 mind seeing either the Agency head or the Governor, if they're
24 that interested in you, to make a change in that.

25 We said you can investigate under these
26 circumstances, and they come up with a policy that says, but
27 only if we approve of it, which wasn't the type of policy, I
28 believe, that the Legislature had. It might have been policies

1 so that even though you're part of the department or the Agency,
2 that you're not waking up a warden in the middle of the night
3 and saying, "Let's see all of the personnel charts on these
4 guards." That you did it during normal business hours and
5 things like this sort.

6 But they've got a policy that in effect says, "If
7 we don't want them to look at it, they can't look at it," and
8 that's not what it's about.

9 The policy should be that you do it in an orderly
10 way that doesn't disrupt the operation of the institution and
11 things of that sort, just like we do with open meeting stuff,
12 that you have to go during hours that are conducive to doing it
13 and not walk into the City Council Chambers and say, "Stop,
14 everybody, and give me the minutes of the last three meetings."

15 So, I really am interested in getting a change of
16 direction there. It's like, maybe there's a reason why, at this
17 point, you shouldn't look into Corcoran. I don't think there
18 was any reason why you weren't the first one out of the box
19 looking at Corcoran.

20 If the FBI comes in, or somebody else comes in,
21 and I'm not saying they were right or wrong, but, you know, the
22 paper was, well, there's no problem there.

23 Now, there's not only a problem, you've got
24 people indicated; you've got the taxpayers picking up the tab,
25 and you have things like this going on.

26 Maybe if you would have been the first in, you
27 might have saved a lot of problems and headed off the Justice
28 Department, because we don't need the feds looking at our

1 prisons if we can do the job ourselves.

2 MR. WOOD: I agree, Senator.

3 CHAIRMAN BURTON: I've got a real problem.

4 I don't mind this nomination going to do Floor,
5 but I think we'd better have whoever it would be, the Agency
6 Secretary come in. If this is a policy that they implemented
7 that said basically, as I read it, the whole Legislature could
8 say, "We want you to look at this," and the Agency says no, you
9 can't look at it.

10 MR. WOOD: That's true.

11 CHAIRMAN BURTON: That's not what, I don't
12 believe, although I don't know if I was here when it was set up,
13 but I don't think we had in mind allowing the fox to guard the
14 chicken coop.

15 SENATOR AYALA: We do have a new appointment to
16 that office, the Secretary of the Agency, whom I've met at least
17 half a dozen times already, and I think he's very positive.
18 He's going to get things done.

19 In fact, he's the one that ordered you to go to
20 Stockton and investigate.

21 MR. WOOD: Yes, sir.

22 CHAIRMAN BURTON: But he shouldn't have that
23 authority. I mean, you should have, if you're going to do the
24 thing, it should be your authority and your judgement. But
25 basically, he's got a whole lot of other fish to fry.

26 Basically, you've got somebody who could be
27 culpable in the problem saying, "Hey, don't look at me."

28 SENATOR KNIGHT: All you're asking is, he

1 shouldn't have veto power as far as the Secretary is concerned.
2 He should have the power to say go investigate something.

3 CHAIRMAN BURTON: Exactly.

4 Senator Ayala.

5 SENATOR AYALA: My legislation will have the
6 Office responding to the Governor and to the Legislature, and
7 not to the in-betweens. That will clear that problem up.

8 CHAIRMAN BURTON: I don't even mind him
9 responding. I don't want the veto. They shouldn't have the
10 veto.

11 I guarantee you, before this thing's taken up on
12 the Floor, I'm going to want to have a talk with them and see
13 whether or not they just put a policy in that says, "a policy
14 developed by you and approved by them," so again, not you.

15 The Inspector General develops a policy saying,
16 "We will do this, that, and the other thing, but we won't do it
17 unless you say okay," and they say, "We'll approve that."

18 SENATOR KNIGHT: In the interim, Mr. Chairman,
19 could I make a motion that we approve his confirmation?

20 CHAIRMAN BURTON: We'll send it to the Floor.
21 I'm reserving the right, sure.

22 SENATOR KNIGHT: I said in the interim. I'll
23 make a motion.

24 SECRETARY WEBB: Senator Ayala.

25 SENATOR AYALA: Aye.

26 SECRETARY WEBB: Ayala Aye.

27 SECRETARY WEBB: Senator Hughes.

28 SENATOR HUGHES: Aye.

1 SECRETARY WEBB: Hughes Aye. Senator Knight.

2 SENATOR KNIGHT: Aye.

3 SECRETARY WEBB: Knight Aye. Senator Lewis.

4 Senator Burton.

5 CHAIRMAN BURTON: Aye.

6 SECRETARY WEBB: Burton Aye.

7 CHAIRMAN BURTON: The roll's held open.

8 [Thereafter SENATOR LEWIS added
9 his Aye vote, making the final
10 vote 5-0 for confirmation.]

11 [Thereupon this portion of the
12 Senate Rules Committee hearing was
13 terminated at approximately 3:35 P.M.]

14 --ooOoo--
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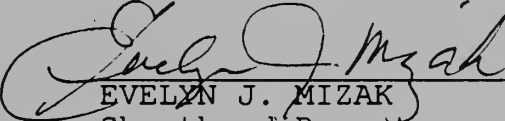
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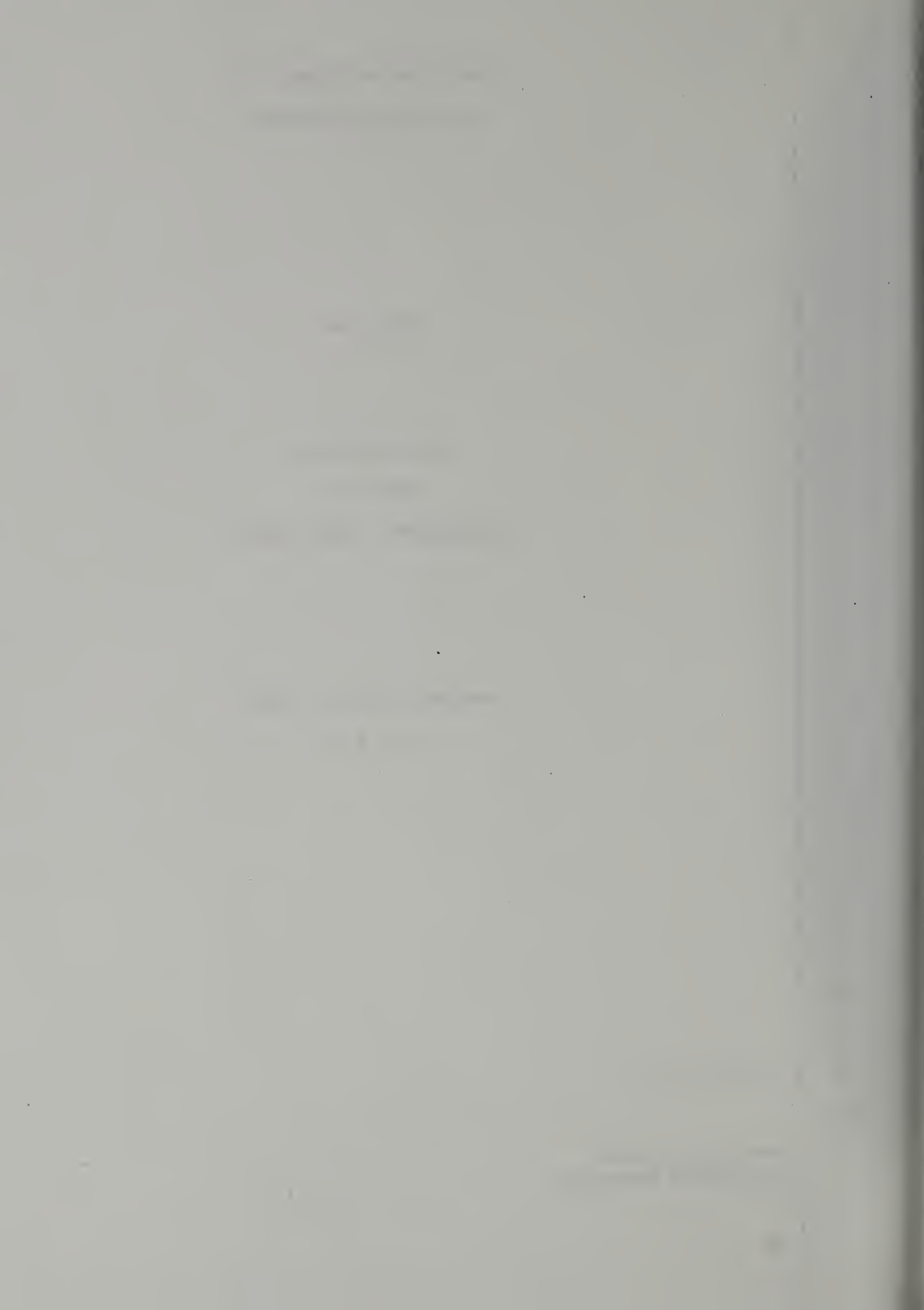
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APPEARANCES

MEMBERS PRESENT

SENATOR JOHN LEWIS, Vice Chair

SENATOR RUBEN AYALA

SENATOR TERESA HUGHES

SENATOR WILLIAM KNIGHT

MEMBERS ABSENT

SENATOR JOHN BURTON, Chair

STAFF PRESENT

GREG SCHMIDT, Executive Officer

PAT WEBB, Committee Secretary

NANCY MICHEL, Consultant on Governor's Appointments

WADE TEASDALE, Consultant to SENATOR LEWIS

FELICE TANENBAUM, Consultant to SENATOR HUGHES

JOSH LOWERY, Consultant to SENATOR KNIGHT

ALSO PRESENT

MARSENA A. BUCK, Member
Board of Behavioral Science Examiners

SHERRY MEHL, Executive Officer
Board of Behavioral Science Examiners

JAMES S. MILCH, Member
California Regional Water Quality Control Board
San Diego Region

ASSEMBLYWOMAN SUSAN DAVIS

LAURA HUNTER, Director
Clean Bay Campaign
Environmental Health Coalition

DONNA FRYE, Founder
Surfers Tired of Pollution (STOP)

THOMAS A. JOAS, M.D., Member
Medical Board of California
Division of Licensing

1 BILL BARNABY
California Association of Anesthesiologists

2 SCOTT SYPHAX
3 California Medical Association

4 JIM RANDLETT
California Association of Plastic Surgeons

5 FRANK CUNY, Director
6 Citizens for Health

7 FAITH GIBSON, L.M.
American College of Domicilliary Midwives

8 TOSI MARCELINE, L.M.
9 California Association of Midwives

10 J. ALRED RIDER, M.D.
Davies Medical Center
11 San Francisco

12 ERNESTO J. PULETTI, M.D.
Davies Medical Center
13 San Francisco

14 LUIS BONILLA, M.D.
St. Luke's Hospital

15 SCOTT BRADLEY
16 Ripon Medical Clinic

17 ANDREW TRAPALEIS
Jackson, California

18 ELENA SOMMA
19 Jackson, California

20 DAVID ZARRINPAR
Pacifica Hospital of the Valley
21 Los Angeles

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26

27

28

INDEX

Page

Proceedings	1
<u>Governor's Appointees:</u>	
MARSENA A. BUCK, Member Board of Behavioral Science Examiners	1
Background and Experience	1
Questions by SENATOR LEWIS re:	
Controversy over Oral Examinations	1
Evaluation of Change in Passage Rates	3
Questions by SENATOR AYALA re:	
Move to Abolish Licensing for Clinical Social Workers	4
Need for Oral Exam for Marriage, Family and Child Counselors	4
Questions by SENATOR HUGHES re:	
Selection of Examiners	5
Compensation of Examiners	5
Length of Term for Examiners	5
Master Examiners	6
SHERRY MEHL, Executive Officer Board of Behavioral Science Examiners	6
Qualifications for Examiners	7
Diversity	8
California Only State to Require Oral Exams	9
Reason Board Has Not Revised Education and Training Requirements for Licensure	9
Status of Continuing Education Requirements	11

Questions by SENATOR KNIGHT re:

Lack of Male Examiners	12
Motion to Confirm	12
Committee Action	13

JAMES S. MILCH, Member
Regional Water Quality Control Board
San Diego Region

Introduction and Support by ASSEMBLYWOMAN SUSAN DAVIS	13
Background and Experience	15

Questions by SENATOR LEWIS re:

Problem of Pollution Runoff in San Diego and Leading Contributing Factors	18
Most Effective Strategies	18

Questions by SENATOR AYALA re:

Possibility of Conflicts of Interest because of Law Firm Affiliations	19
Companies Cited for Major Violations and Amounts of Fines	20
Proper Balance between Industrial, Domestic, Environmental, Fishing and Agricultural Uses for Water Supply	20
Circumstances for Enforcement Action against Violations of Discharge Requirements	22

Witnesses in Opposition:

LAURA HUNTER, Director Clean Bay Campaign Environmental Health Coalition	22
--	----

Questions by SENATOR LEWIS re:

Legal Citations	24
Resumption of Testimony	24

Questions by SENATOR AYALA re:

Concerns about Qualifications 29

DONNA FRYE, Founder

Surfers Tired of Pollution (STOP) 30

Questions by SENATOR AYALA re:

Qualification of Nominee 33

Response by MS. HUNTER 33

Rebuttal by MR. MILCH 34

Questions by SENATOR LEWIS re:

Name of NGO Organization Associated
with Recreation, Fish or Wildlife 36

Impact on Board's Vote when Members
Recuse Themselves 37

Response by MS. HUNTER 37

Comments by SENATOR LEWIS re: Selectivity
of Opposition 39

Questions by SENATOR HUGHES re:

Qualifications for Position 41

Votes Needed on Board to Pass Items 42

Request by SENATOR HUGHES to Put Confirmation
Over until Chairman Is Present 43

Decision to Put Over Confirmation 44

THOMAS A. JOAS, M.D., Member

Medical Board of California

Division of Licensing 45

Background and Experience 45

Questions by SENATOR HUGHES re:

Trainees Pay to Enter 1324 Programs 49

No Guarantees for Licensure 49

Purpose of 1324 Programs 49

Nominee's Training	51
Accreditation of Community Hospitals	51
Resumption of Testimony	52
Questions by SENATOR HUGHES re:	
Passage of Exams by Graduates of 1324 Program	53
Resumption of Testimony	53
Questions by SENATOR AYALA re:	
Reason for Abolishing 1324 Program	55
Questions by SENATOR LEWIS re:	
Suggestions to Speed up Physician Disciplinary Process	57
<u>Witnesses in Support:</u>	
BILL BARNABY California Association of Anesthesiologists	58
SCOTT SYPHAX California Medical Association	58
JIM RANDLETT California Society of Plastic Surgeons	59
FRANK CUNY, Director California Citizens for Health	61
FAITH GIBSON American College of Domicilliary Midwives	61
TOSI MARCELINE California Association of Midwives	62
<u>Witnesses in Opposition:</u>	
J. ALFRED RIDER, M.D. Davies Medical Center	63
Questions by SENATOR HUGHES re:	
Reason for So Many Patient Complaints against Physicians Trained in 1324 Programs	70

Questions by SENATOR KNIGHT re:	
Location of Davies Medical Center	72
Failure Rate of Other 1324 Trainees	73
Other 1324 Programs	73
Questions by SENATOR LEWIS re:	
Graduates from DR. RIDER's Program	74
Differences between 1324 Programs	74
Questions to DR. JOAS by SENATOR LEWIS re:	
Bias against 1324 Programs	75
Faults Found against DR. RIDER's Program	75
Abolishing Entire 1324 Program May Have Gone too Far	76
Questions to DR. RIDER by SENATOR LEWIS re:	
Intention to Oppose Confirmation of Future Medical Board Appointees	77
Resumption of Testimony by DR. RIDER	77
Questions by SENATOR KNIGHT re:	
Cost Associated with Program	78
Purpose of Program	79
Destination of Program Graduates	80
Resumption of Testimony by DR. RIDER	81
<u>Further Witnesses in Opposition:</u>	
ERNESTO PULETTI, M.D. University of California at San Francisco	83
LUIS BONILLA, M.D. St. Luke's Hospital, San Francisco	85
SCOTT BRADLEY, M.D. Ripon Medical Clinic	86

Questions by SENATOR KNIGHT re:

Definition of 1324 Program 87

Preclusions 88

Further Witnesses in Opposition:

ANDREW TRAPALEIS, M.D.

Jackson, California 88

ELENA SOMMA, M.D.

Jackson, California 90

DAVID ZARRINPAR, M.D.

Pacifica Hospital of the Valley 90

Motion to Confirm 91

Committee Action 92

Termination of Proceedings 92

Certificate of Reporter 93

P-R-O-C-E-E-D-I-N-G-S

--ooOoo--

SENATOR LEWIS: We're now beginning the Governor's appointees appearing today. First up is Marsena Buck, Member, Board of Behavioral Science Examiners.

MS. BUCK: Good afternoon.

SENATOR LEWIS: Good afternoon, welcome.

Do you have any kind of opening statement you'd like to share with us today?

MS. BUCK: My name is Marsena Buck. I'm a Member of the Board of Behavioral Science. I have served in that capacity for almost four years.

I find that Board to be one that is greatly concerned about the welfare of the consumers in California who come to the professions that are licensed and regulated by the that Board, and it's been a pleasure to serve on it.

I would be pleased to answer any questions you have for me.

SENATOR LEWIS: Thank you.

The question that I would like to ask is what's going on with the controversy relative to oral examinations?

MS. BUCK: Yes.

SENATOR LEWIS: And your position on the whole issue, given the fact that I think California is the only state that does require the oral component.

MS. BUCK: Certainly.

Over the course of the last few months, there has been a great deal of focus on the oral examine for particularly

1 licensed clinical social workers. I am a licensed clinical
2 social worker.

3 We -- as you know, in the Department of Consumer
4 Affairs there are several exams that include orals: the
5 marriage, family counselors; psychologists. The concern, and
6 it's one the Board takes very seriously, is whether the oral
7 exam is fair and equitable, and whether, in having an oral exam
8 for not just this profession but any profession, the people of
9 California are better protected and better served.

10 We have at the Board level, and you have in the
11 Legislature, over these past months looked very carefully at
12 that. Several things have happened as a result of that. We
13 have a new scoring system for both of our orals. It's been
14 used now for the marriage, family, child counselors, and will be
15 used for this round of the LCSW.

16 There is -- we're planning a new written exam.
17 The exam is both; there's an oral and a written. We have set
18 aside more time for the candidates to consider the vignette.

19 This oral, by the way, is designed to test those
20 things that you don't normally -- you cannot well test with a
21 written exam. Social work and marriage, family counseling,
22 psychology by it's very nature, is an oral profession. We work
23 with people individually and in groups. And we use the skills,
24 those skills, to bring to resolution the problems presented to
25 us, some very serious. We muck around in people's heads a lot.

26 And one of the best ways, in my opinion, to get
27 to that kind of knowledge is through an oral exam that has a
28 vignette, that's standardized for everybody, that's well

1 designed, and that gives candidates a chance to say to examiners
2 what they really know about people, and about intervening in the
3 lives of people in some very, very serious and grave ways.

4 This exam -- I can't -- I don't think I can
5 convey to you how seriously the Board takes this whole issue of
6 examination because of the seriousness of the professions that
7 we are involved with on behalf of the consumers of California.

8 We have looked at the panel of examiners, at how
9 they're selected, at how they're trained. The test has been
10 validated both for content and for the presentation.

11 It's a very serious subject for us.

12 SENATOR LEWIS: Have there been any modifications
13 to the test in place long enough so that you've been able to
14 evaluate any kind of a change in passage?

15 MS. BUCK: Not really, because they're mostly in
16 place. I mean, they're in place, awaiting results.

17 We have -- we've done a series of studies. The
18 time, for example, on the vignette, giving people a longer
19 period of time to look at and decide the approach they're going
20 to use is a recently made change. It's very hard for me to tell
21 you at this point what impact that's going to have.

22 We have studies in place and in route that will
23 give us all a good deal of better information about that, but
24 the truth of the matter is, they are in process.

25 We're looking at this from several points of
26 view, by the way. We're, as are you, interested in the
27 education. We're also interested in the supervision the
28 candidates have prior to taking an exam.

1 SENATOR LEWIS: Thank you.

2 Before we ask for anyone from the audience
3 whether there was anyone that wishes to testify in favor or
4 against the confirmation, are there any questions from either
5 Senator Ayala or Senator Hughes?

6 SENATOR AYALA: Yes, I have a question.

7 SENATOR LEWIS: Senator Ayala.

8 SENATOR AYALA: Is there a move afoot to abolish
9 the licensing for clinical social workers?

10 MS. BUCK: To abolish the licensing? I don't
11 know of any attempt to do that.

12 SENATOR AYALA: There is none, but you're talking
13 about the oral exam only.

14 MS. BUCK: The major focus has been on the oral
15 exam. From the Board's point of view --

16 SENATOR AYALA: It also applies to marriage,
17 family, and child counselors as well?

18 MS. BUCK: No, the oral exam for marriage and
19 child counselors has not been looked at in terms of elimination..

20 SENATOR AYALA: Of course my next question is,
21 why not?

22 MS. BUCK: You know, I don't know. It seems to
23 me that if you're going to declare that we don't need an oral
24 exam for one of these helping professions, then you should
25 really look at eliminating them for all of them.

26 And it's really a consumer issue, I think.

27 SENATOR AYALA: Thank you.

28 SENATOR LEWIS: Senator Hughes.

1 SENATOR HUGHES: Thank you very much.

2 How is a panel of examiners selected? Would you
3 make us aware of that, please?

4 MS. BUCK: Certainly, Senator Hughes.

5 We advertise for panel members, for examiners.
6 We do that in a number of ways. For example, there was a Senate
7 hearing last year in which a number of people expressed some
8 concern about the oral exam. In the next recruitment of
9 examiners, which took place shortly after that, we contacted all
10 of those people to see if any of them would be interested in
11 being examiners.

12 We advertise in the professional journals. We
13 advertise in our own newsletter. We do contact through the
14 schools and generally widely within the professional community.

15 Those people are then --

16 SENATOR HUGHES: Are they compensated for their
17 services in any way?

18 MS. BUCK: They are compensated, and I can't tell
19 you the amount that they're compensated. I just don't
20 remember.

21 We strive to select people who have professional
22 expertise. We strive to be sure the selection represents the
23 demographics of California in terms of the people of color, and
24 the whole range of expertise we look for in the examination.

25 SENATOR HUGHES: How long do these people serve
26 as examiners? For a one-time shot for one time examining
27 period, or over a year, two years, months, or what have you? Or
28 does it depend on whether the Board is pleased or not with their

1 performance? Could you tell me that?

2 MS. BUCK: We do have a process of -- we have
3 master examiners. We have people who are at a higher level of
4 expertise.

5 SENATOR HUGHES: How do you become a master
6 examiner? Over a period of time, or --

7 MS. BUCK: Over a period of time with experience
8 and with demonstrated expertise.

9 SENATOR HUGHES: What's the criteria for becoming
10 a master examiner? That's what I'm really aiming at.

11 MS. BUCK: And I honestly don't have the details
12 of that for you, I'm sorry. I'll be happy to get them for you.

13 SENATOR HUGHES: I think it help our Committee a
14 great deal, I mean just to even have it on record, so that as we
15 look at this, and look at -- someone behind you coming up to
16 answer that question?

17 MS. BUCK: No doubt. This is Sherry Mehl, who's
18 the Executive Officer of the Board.

19 MS. MEHL: I'm the Executive Officer of the
20 Board.

21 We currently have master examiners or lead
22 examiners. There are two for the north and two for the south.
23 We give the exam simultaneously in both regions.

24 These are people that are people that have served
25 as examiners for a long period of time.

26 SENATOR HUGHES: What do you call as a long
27 period of time?

28 MS. MEHL: Most of them between six and ten years

1 as examiners. They are familiar with all of the issues of the
2 examination, and they're oversight at the exam, so that they
3 will sit in. If there is a problem with one of the examiners,
4 they may sit in on the examination to review what's going on.

5 They will review tapes if there is any wide
6 discrepancy. That is immediately reviewed on site.

7 There are two independent examiners who review
8 each candidate, so they are rating independently of each other.
9 There are some times when there is a discrepancy between the
10 two scores for each examiner. So, that is reviewed by the lead
11 examiner on site to determine why that happened, and so they can
12 resolve that immediately at the site.

13 SENATOR HUGHES: What are their individual
14 qualifications to qualify as an examiner, other than the length
15 of time they spent on task? What are their preparations?

16 MS. MEHL: They receive a personal interview
17 where they are asked what they're doing to be current in the
18 profession. They have to have a current caseload so that they
19 are actually active in the profession. They also have to
20 demonstrate their ability, through testing, where we actually
21 test them on how they can -- if they can actually do the
22 examination themselves. And then we also -- on personal
23 recommendations as well as their resumes.

24 SENATOR HUGHES: The choice of these examiners,
25 do they include anything about gender, or age, or et cetera,
26 ethnicity or race? Or are you at all concerned about those
27 things.

28 MS. MEHL: We strive for the most diverse

1 population of examiners that we can possibly obtain.

2 SENATOR HUGHES: You said you had master
3 examiners for north and south. Would you describe them in terms
4 of the categories that I named, please?

5 MS. MEHL: Yes.

6 In the north there are two female lead
7 examiners. One is an Afro-American; the other is Caucasian.

8 Is this the kind of information that you want?

9 SENATOR HUGHES: Yes.

10 MS. MEHL: They are about forty-five to fifty
11 years old.

12 In the south there are also two examiners. One
13 is an Afro-American; the other is Caucasian, and they have
14 been -- they are both around the same ages, between forty-five
15 and fifty-five, I believe.

16 SENATOR HUGHES: They're not both females, are
17 they?

18 MS. MEHL: They are both females.

19 SENATOR HUGHES: So, you don't have any male
20 examiners? That's what I'm driving at.

21 MS. MEHL: We currently have an examiner slot
22 that is open, and we are adding an examiner from the north who
23 is a male and Asian.

24 SENATOR HUGHES: Thank you, because I'm an equal
25 opportunity employer, and I was really a bit surprised to find
26 out that you didn't have any male examiners.

27 SENATOR LEWIS: Were you pleasantly surprised.

28 SENATOR HUGHES: No, no.

1 SENATOR KNIGHT: Thank you for taking up our
2 issue.

3 SENATOR HUGHES: I like males. Put it on the
4 record, please.

5 [Laughter.]

6 SENATOR HUGHES: I am glad that you have that
7 information available.

8 MS. BUCK: I'm glad that she was here. And she
9 said exactly what I would have said had I known.

10 SENATOR HUGHES: Had you known the answers.
11 Why is our state the only state to require an
12 oral exam as the condition of licensure?

13 MS. BUCK: I'm not sure I can answer that because
14 I don't know what goes on in all the other states.

15 I do -- I have, over last two years, represented
16 California at the American Association of State Social Work
17 Boards. And in talking, in casual talk to colleagues, it's my
18 impression that other states are interested in oral exams
19 because they give you a different look at what a person can do
20 in this particular profession.

21 But I honestly am not an expert in what other
22 states do.

23 SENATOR HUGHES: Why hasn't the Board revised the
24 education and training requirements for licensure to ensure that
25 the applicants have the clinical skills that are currently
26 tested for in the oral exams?

27 MS. BUCK: Well, as I understand it, the Board
28 doesn't have jurisdiction over what schools teach, but the bill

1 that's moving forward at this point would remedy that, and I
2 think appropriately so.

3 My sense of that is that within -- as this
4 license, both the licensed clinical social worker and the
5 marriage, family, counselor license has evolved -- and I have a
6 very low license number, so I've watched the evolution of this.
7 I've seen all the forms that this exam has been in over the
8 period of my career -- my sense is that the Board -- the state
9 has always looked for the clinical emphasis. And that frankly,
10 the issues have been in terms of what happened in terms of
11 people's preparation, knowing really how -- let me back up.

12 This license is a license to do psychotherapy.
13 Everybody who comes out of the school of social work isn't
14 prepared to do psychotherapy, shouldn't be. All social workers
15 don't.

16 But in the fullness of time, there has been a
17 sense that you needed a license, whatever you did. So, I think
18 there's been some need, not at the state level, and not at the
19 Board level, but within the professional community to force
20 fit. And I don't think that ever works.

21 My sense is that the language that's moving
22 forward now in the Senate bill would do a lot to mitigate that.
23 And that frankly, sunset reviews do a great deal to make us look
24 very closely at these issues.

25 I think it's something you need to kind of mend
26 the fence and walk the fence line on rather regularly.

27 SENATOR HUGHES: I thank you very much for being
28 patient with my probing, because I was really curious about

1 this.

2 And maybe you could tell me what's the status of
3 the Board's implementation for extended continuing education
4 requirements for marriage and family, child counseling, and also
5 for the licensed clinical social workers?

6 MS. BUCK: We have implemented the continuing
7 education requirements, and people are now accumulating those
8 hours, including me.

9 You know, it's an interesting experience, because
10 I have to tell you from my point of view, that my life gets
11 fairly busy. And without some kind of requirement that I go out
12 and do this, I didn't always. I have to have 36 hours before I
13 can renew my license next time around.

14 You know, as I move around the state, people are
15 very seriously focused on the continuing education. I very much
16 think we have to do that in professions, by the way.

17 SENATOR HUGHES: Well, we try to renew our
18 licenses every time we come up for re-election.

19 MS. BUCK: I know you do.

20 SENATOR HUGHES: I hope that the education we
21 receive here is good and not bad.

22 Thank you very much.

23 MS. BUCK: My only regret about your renewing
24 your licenses, each and every one of you, is that we've put a
25 limit on the number of times you can do that.

26 SENATOR HUGHES: That's true.

27 SENATOR LEWIS: Anyone in the audience wishing to
28 offer testimony on behalf of the confirmation? Anyone wishing

1 to come forward in opposition or to share concerns?

2 SENATOR KNIGHT: Question.

3 I'm sorry I was late. Maybe I came in after the
4 discussion and the questions were answered.

5 Good afternoon.

6 MS. BUCK: Good afternoon, Senator.

7 SENATOR KNIGHT: It was indicated that there were
8 no males on the Board.

9 MS. BUCK: As examiners.

10 SENATOR KNIGHT: As examiners?

11 MS. BUCK: As lead examiners, yes.

12 SENATOR KNIGHT: So, these aren't lead examiners?

13 MS. BUCK: We do have some men on the Board,
14 actually, several.

15 SENATOR KNIGHT: Good.

16 MS. BUCK: The problem that Senator Hughes was
17 talking about is, of the current four lead examiners, all four
18 are women. We are adding a fifth man to that position.

19 SENATOR KNIGHT: I hope it's not a fifth wheel.
20 Okay, thank you.

21 MS. BUCK: Senator, a man would never be a fifth
22 wheel.

23 SENATOR LEWIS: What's the pleasure of the
24 Committee?

25 SENATOR KNIGHT: Move it.

26 SENATOR LEWIS: We have a motion by Senator
27 Knight. Please call the roll.

28 SECRETARY WEBB: Senator Ayala.

1 SENATOR AYALA: Aye.

2 SECRETARY WEBB: Ayala Aye.

3 SECRETARY WEBB: Senator Hughes.

4 SENATOR HUGHES: Aye.

5 SECRETARY WEBB: Hughes Aye. Senator Knight.

6 SENATOR KNIGHT: Aye.

7 SECRETARY WEBB: Knight Aye. Senator Lewis.

8 SENATOR LEWIS: Aye.

9 SECRETARY WEBB: Lewis Aye. Four to zero.

10 SENATOR LEWIS: Congratulations.

11 MS. BUCK: Thank you very much.

12 SENATOR LEWIS: We are going to proceed to Item C
13 in our agenda so we can accommodate Assemblywoman Davis, go
14 forward with Mr. James Milch, Member of the California Regional
15 Water Quality Control Board, San Diego Region.

16 Welcome, Assemblywoman.

17 ASSEMBLYWOMAN DAVIS: Thank you, Mr. Chairman and
18 Members. I certainly appreciate the opportunity to introduce my
19 good friend here today, and having not done this before, before
20 the Committee, if I'm doing something Inappropriate, please let
21 me know.

22 I really am here for a very personal reason. I'm
23 here to spoke on behalf of Mr. James Milch, who is a candidate
24 for appointment to the San Diego Regional Quality Control Board.
25 He has been a neighbor and a dear friend of mine for the past 25
26 years. It is probably rare for me to come and speak on behalf
27 of a Governor's appointee, but it really is my honor to do that
28 today.

1 From the first time that Mr. Milch and I met many
2 years ago, actually on the corner of our neighborhood, a very
3 nice corner in San Diego, it was clear to me that I was meeting
4 a special individual. And over the subsequent years, I've come
5 to appreciate his professional and his community involvement.
6 The early of private impressions that I had have certainly been
7 borne out.

8 Where ever he put his energies, there was a sense
9 that he wanted to make a positive contribution. And I know that
10 most people who are living in San Diego and have had an
11 association with him over the years really respect the role that
12 he has played in the development of the city, and the way in
13 which he contributes many of his own personal hours to just
14 about anything that he has come in contact with.

15 And I believe that his reputation for honest
16 appraisal and his tireless efforts and even-handedness have been
17 appreciated by many. I can even attest to his even-handedness
18 because he's had to take some ribbing for his support of my
19 candidacy over the years, and I always knew that I could go to
20 Jimmy, and that he would be very honest and up-front with me,
21 and has been very forthright in giving me his guidance and
22 support.

23 His legal career has been marked by one of
24 impeccable integrity, and his community efforts have been
25 unselfish. He was Chairman of the Park and Recreation Board for
26 many years, and is an active member and leader of the Old Globe
27 Theater in San Diego. He also almost single-handedly led a
28 drive to move the historic First Synagogue in San Diego to a new

1 home in Heritage Park in Old Town.

2 I served with Mr. Milch for about eighteen months
3 on the City of San Diego's Growth Management Task Force
4 in the mid-80s. That was a time that we were experiencing
5 tremendous growth in San Diego. And then, the ensuing years, as
6 you all know, we saw a recession, so that the work of that task
7 force didn't necessarily come to fruition in the way that it was
8 intended. But during that time, he was a moderating force on
9 that group and always a problem solver.

10 You really could not pigeon-hole his approach,
11 despite the fact he does represent a number of land developers
12 professionally.

13 I know that you have had a number of letters in
14 support of Mr. Milch, and that he has been serving on that
15 Control Board since last July. And I would hope that you would
16 look favorably on this appointment, and that he would have the
17 opportunity to give his contribution in the ensuing years, and
18 that he would be a strong member of that Board.

19 We certainly need people of integrity and clear
20 thinkers when they are looking at these issues, and I cannot say
21 anything stronger, that I think you have excellent candidate in
22 front of you.

23 Thank you very much, Members, Senators, for
24 hearing me out, and I hope that it is a good opportunity for you
25 all to chat with Mr. Milch. Thank you.

26 SENATOR LEWIS: Thank you for joining us today.

27 Mr. Milch, welcome.

28 MR. MILCH: After an introduction like that,

1 there is very little I can say, other than to thank the
2 Assemblyperson very much for that chronicle of events.

3 I do want to serve the community on the Regional
4 Water Quality Control Board. I confess that I came to the
5 position without expertise in that field, but have attempted to
6 be a quick learn in the months that I have served since July of
7 last year.

8 Two issues have been addressed by members of the
9 public. I've attempted to respond to those issues of concern in
10 a letter that I sent to the Chairman, but I think copies were
11 directed to each of the other Members.

12 The first related to a conflict of interest.
13 That one most recent letter relates to the fact that I represent
14 Sea World, which is a subsidiary of Anheuser Busch Company. Sea
15 World is a permanent holder.

16 No issue has ever come before the Board during my
17 tenure dealing with Sea World, but it is clear, and I have been
18 advised by Mr. Atwater early on that I cannot participate in any
19 hearing dealing with a client that has a permit. When that
20 issue ever comes before our Board, I would clearly remove myself
21 from the chambers during any of that deliberation.

22 The other conflict that I think the Environmental
23 Health Coalition addressed in their letter relates to a
24 relationship that my law firm has with another law firm.

25 Our firm is of counsel to a San Diego law firm.
26 That other law firm has occasion to represent people with
27 matters before the Board.

28 I have no economic interest in that law firm. As

1 some of you might know, of counsel relationships are as varied
2 in interpretations as there are such relationships.

3 Basically, my law firm is a two-person law firm.
4 It specializes in legislative advocacy, municipal work, and we
5 have really no occasion to do any kind of drafting or
6 litigation.

7 We were -- it was suggested that we associate in
8 a forum with another law firm so that we might refer cases that
9 we don't handle to them, and that they could refer cases falling
10 within our jurisdiction to us.

11 We have, as I pointed out in my letter, an
12 economic arrangement that on those cases there would be a fee
13 paid either to ourselves or to themselves.

14 However, it is clear that I would not again sit
15 on the Board on any matter that we would have referred to this
16 other law firm where they were representing those people.

17 An issue came up as to the Port of San Diego
18 being represented by this other law firm. And I identified all
19 of these factors to the Board attorney, and he concurred that I
20 had no conflict of interest and could participate. So, that
21 touches on the issues of conflict.

22 I, in my conscience and, I think, legally, have
23 no conflict in those matters.

24 The other issue related to whether I filled the
25 distinctive category of fish, wildlife and recreation that was
26 related to this particular slot.

27 Again, as Assemblyperson Davis has indicated, my
28 public career has pretty well spanned most of these areas of

1 parks, recreation. I fish. I swim. I don't hunt. I don't
2 hike. But I think for the most part, I cover what is envisioned
3 within that classification.

4 And I'd certainly be happy to answer your
5 questions as best I can.

6 SENATOR LEWIS: Thank you, Mr. Milch.

7 How big a problem do you think pollution runoff
8 is in San Diego, and what are the leading contributing
9 factors?

10 MR. MILCH: Well, pollution runoff, nonpoint
11 runoff, is the major cause of our bays and ocean being
12 polluted. It is a big problem, and unfortunately, I don't see
13 it as a problem that is going to be easily solved because, if we
14 have two million citizens in our community, we have two million
15 contributors. They don't know it, but the nonpoint is a
16 problem.

17 We and the County, as I pointed out in my
18 correspondence, are being pro-active in trying to monitor not on
19 a reactive basis, but in anticipation of what the pollution
20 content is in many of our waters, and try to address the
21 locations and attack them as best we can.

22 But it is a serious problem in our region.

23 SENATOR LEWIS: From your experience, what are
24 most cost effective strategies of trying to combat this kind of
25 pollution? Is there anything else that's under discussion right
26 now?

27 MR. MILCH: I think education is the most cost
28 effective. We have to make each of our citizens aware and

1 responsible for what is happening, and what they're doing on
2 their lawns, what they're doing on their streets, with their
3 pets.

4 We seem to have a pretty good control over point
5 pollution. In other words, if the Navy, something flows from
6 one of their ships, we capture it and, we can hit them a couple
7 of times and get it to stop.

8 But we have to educate the public of their role.

9 SENATOR LEWIS: Questions from Members of the
10 Committee? Senator Ayala.

11 SENATOR AYALA: Mr. Milch, you're a member of the
12 law office of Milch and Wolfsheimer?

13 MR. MILCH: Yes, sir.

14 SENATOR AYALA: Do they ever appear before the
15 governing board on an issue --

16 MR. MILCH: Never.

17 SENATOR AYALA: They never have.

18 I have a letter here from that office to the
19 members of the Board, the California Regional Water Control
20 Board, regarding a shipyard general permits, number so-and-so.

21 MR. MILCH: From our office, sir?

22 SENATOR AYALA: You're listed as one of the
23 firms, but it's Procopio, Cory, Hargreaves and Savitch.

24 MR. MILCH: Yes, that is the firm of which we are
25 of counsel. I sort of explained -- that's sort of an economic
26 relationship.

27 SENATOR AYALA: You're not in any way connected
28 with the firm itself?

1 MR. MILCH: Other than of counsel, we do not
2 participate in the profits of that firm or share in their losses
3 either, sir.

4 SENATOR AYALA: Can you give me names of
5 companies that you have ordered to cite for major violations,
6 and also the amounts that have fined, offhand?

7 MR. MILCH: Probably the most recent citation was
8 the Port of San Diego for about \$132,000.

9 We have had litigation down in the Chula Vista
10 area with polluters there. I can't tell you the name of the
11 companies. And we also have ongoing litigation and orders
12 outstanding with the Chatham Brothers scrap yard up in
13 Escondido.

14 As I pointed out in one of my correspondence, a
15 great many -- you know, like 95, 98 percent -- of the pollution
16 issues, the citations, the orders, are issued and resolved at
17 the administrative level. We get very few. In fact, I think
18 it's been about two or three since I've been on the Board in
19 July of last year. So, there hasn't been a heavy, you know,
20 court of last resort where we're sending out fines.

21 The one that is most memorable is the one with
22 the Port of San Diego.

23 SENATOR AYALA: What do you consider a proper
24 balance between industrial, domestic, environmental, fishing
25 and agricultural uses for our actually limited water supply,
26 especially in San Diego, where you don't have an underground
27 basin? What do you consider a proper balance between all of
28 these concerns?

1 MR. MILCH: I think the -- everybody thrives on
2 as clean a water as you possibly can get. I don't think there
3 is an excuse, because you have an industry, that may be even
4 creating a lot of good jobs. If that industry is adversely and
5 grossly affecting our waters, you're not balancing, because the
6 end result is usable and pure waters, as pure as we can get it.

7 SENATOR AYALA: But there should be a balance
8 between all of these needs that you have for water resources.

9 MR. MILCH: Oh, sure. You can't say no boats in
10 the water because there's swimmers, but you do have to require
11 permits and procedures to balance the uses.

12 San Diego is trying like heck to be an active
13 port, a shipping source, and so we don't want to run that
14 business out, but we don't give anyone carte blanche to pollute
15 the water.

16 But I think under our permits, we have things
17 pretty well controlled. But as asked earlier, I think it's our
18 runoff, non site-specific, that we have our problems.

19 SENATOR AYALA: San Diego depends mostly on
20 imported water, as you well know. There's no underground basins
21 in San Diego.

22 MR. MILCH: Correct.

23 SENATOR AYALA: So, the amount of water you get
24 is mostly State Water Project. You're trying to get some from
25 the river now, but that's another issues that we don't want to
26 get involved with here today.

27 Under what circumstances would you bring an
28 enforcement action against violations of discharge

1 requirements? Is there any? Do you have reservations against
2 going after these people that violate that?

3 MR. MILCH: None at all. That's the job.

4 SENATOR AYALA: I don't have any other questions,
5 Mr. Chairman, at this time.

6 SENATOR LEWIS: Thank you, Senator.

7 Any other questions from Members of the
8 Committee?

9 Anyone in the audience wishing to offer
10 additional testimony in behalf of the confirmation? Anyone
11 wishing to offer testimony in opposition or sharing concerns
12 regarding the appointment? Please come forward.

13 MS. HUNTER: Good afternoon, Senators. My name
14 is Laura Hunter from the Environmental Health Coalition, where
15 I am Director of the Clean Bay Campaign.

16 I am here before you today to oppose the
17 confirmation of Mr. Milch to the San Diego Regional Water
18 Quality Control Board.

19 For those of you that aren't familiar with the
20 Environmental Health Coalition, we are a local, San Diego based,
21 nonprofit environmental justice organization dedicated to
22 preventing the illness and environmental degradation associated
23 with the toxic chemicals in the environment, work place, and
24 home.

25 Since 1987, we have been heavily involved in the
26 activities of the Regional Water Board in trying to clean up,
27 protect, San Diego Bay, particularly in the area around safety
28 of fish consumption for our urban communities that depend on the

1 Bay, and the contaminated sediment problems which we have.

2 Our objections to Mr. Milch as a Board member are
3 founded in the fact that we do not believe that he meets the
4 minimum requirements outlined in the Water Code. I'll talk to
5 that in a minute. I gave you the first page of that.

6 He does not have a demonstrated interest in the
7 sensitive uses of the waters which he is to represent and has,
8 in our view, a conflict of interest.

9 I want to next thank this Committee, because it
10 was the Senate Rules Committee that, just about a year or a
11 year-and-a-half ago -- and Mr. Ayala, I think you remember this,
12 and we want to reaffirm our thanks to you -- you did deny the
13 confirmation of two Water Board members to our San Diego region.
14 That has made a demonstrable positive impact on the kind of
15 dialogue and activities that we've had in San Diego.

16 I just want you to know that what you folks do up
17 here affects us down there, and we are here again today to ask
18 for your help.

19 Mr. Milch does not meet the one requirement, in
20 our view, for the position which he occupies. You will see on
21 the page before you from the Water Code. It states the position
22 filled by Mr. Milch is to be filled by, quote, "One person from
23 a responsible nongovernmental organization associated with
24 recreation, fish, or wildlife."

25 We do appreciate Mr. Milch's activities with the
26 Old Globe Theater, Balboa Park, those kinds of recreational
27 areas, but they are not water dependent. They are not public
28 health kinds of activities. That's not what was meant by the

1 recreation in the Water Code. He just does not meet this
2 criteria.

3 In his March 20th letter, he indicated that he is
4 a member of the Friends of Balboa Park, but there is no water
5 dependent recreation in Balboa Park, unless you count the
6 reflecting pond, which I don't think we do. The wildlife are
7 just the pigeons that were imported for the World's Fair.

8 This is not the kind of recreation that was meant
9 in the Water Code. It meant fishing, swimming, diving, that
10 kind of thing.

11 We have great concern about the safety --

12 SENATOR LEWIS: Do you have any legal citation on
13 that point? Any legal citation on that last point?

14 MS. HUNTER: The Water Code.

15 SENATOR LEWIS: Relative to what you're saying
16 about what recreation refers to?

17 MS. HUNTER: No, I don't. But I guess --

18 SENATOR LEWIS: Just because it's in the Water
19 Code --

20 MS. HUNTER: I think of the Water Code, which is
21 about water and talks about water recreation, maybe I'm making
22 an assumption that's too big, but the point is, that is the only
23 seat where water contact, water recreation, is mentioned. It's
24 the only seat, if you look at all the seats where public health
25 is the issue.

26 I think part of the way we use water for fish,
27 wildlife, or swimming, diving, surfing, those kinds of water
28 contact situations, so we think that it is not meant to mean

1 baseball. We don't have people on the Water Board to protect
2 the rights of people who play soccer.

3 Not that we don't like soccer, but it's not a
4 water quality issue.

5 Mr. Milch's voting record has not defended fish
6 and wildlife in the recreation, and his debate at Board meetings
7 has, unfortunately, been decidedly polluter-friendly. I want to
8 revisit a couple of the votes that Mr. Milch raised in his
9 letter.

10 While he indicated today and in his letter, he
11 did ultimately vote to fine the Port District \$132,000, however
12 I was at the hearing, and he only voted that way after he argued
13 very clearly and stated that -- and I'm quoting, "The Port
14 District's efforts were superhuman to achieve the cleanup of
15 that site."

16 They were not superhuman, and I've included a
17 timeline of how many times basically the Port had come to the
18 Board and said, "Just don't fine us. We'll take care of it.
19 Please leave us alone." The Board would back away, and the Port
20 never cleaned up the site.

21 Yes, once he figured out there was no other
22 support on the Water Board to not give this fine, he did vote
23 with the majority. But he argued in debate that we should hold
24 off on the fine of the Port yet once again.

25 Even though his law firm is of counsel, there is
26 a relationship there. He's on the Port District's letterhead.

27 We asked Mr. Milch to recuse himself, and he
28 refused.

1 Another vote I'd like to talk about, which I
2 think you don't have whole story in your letter from Mr. Milch
3 on May 20th, is the vote on the San Onofre nuclear generating
4 station. They had requested for higher heat discharges into the
5 ocean, which is damaging to the ocean.

6 There were actually two votes, and I've given you
7 the minutes in the packet that I just handed out. One was to
8 approve the environmental documentation. The second was to
9 approve the actual discharge of the waste.

10 It is true, he first voted that the environmental
11 documentation was insufficient, and he lost on that count.
12 However, he then went on to support the increase in heat.

13 The obvious question is, how could he vote for an
14 action that would negatively affect ocean waters that he
15 believed did not have adequate environmental review? What was
16 his support for more water quality degradation based on?

17 He has demonstrated a partiality to polluters,
18 and his voting record to date demonstrates that he is not a
19 suitable representative for public health.

20 We've touched on the idea of the appearance of
21 conflict of interest. By being in counsel with a firm that
22 represents the Port District, there is at least the appearance
23 of conflict.

24 Even though we understand that the attorneys
25 think he satisfied the strict legal requirements, the appearance
26 of this conflict, his name on the letterhead of the discharger's
27 attorneys, and coupled with his lack of qualification from a
28 responsible NGO associated with fish, wildlife, and recreation,

1 and record thus far convince us that he should not be appointed
2 to this seat.

3 The past actions of the Senate Rules Committee
4 have resulted a determinative improvement in the quality of the
5 enforcement and the decisions in San Diego. Several of you may
6 not be familiar with the history of the San Diego Regional Water
7 Board. The poor enforcement of the San Diego Board was reknown
8 and was not abated until this body took very serious and much
9 warranted action to deny appointments, confirmation of two
10 appointments.

11 As a result, the presence of new, independent
12 thinkers and people who vote their conscience on our Board, like
13 Charley Wolk, Wayne Baglin, Frank Piersall, Frank Adjarian, have
14 made a tremendous difference in the debate and the quality of
15 the decisions on our Board.

16 You may be surprised to hear that. Although we
17 don't agree with those gentlemen on every point, we support that
18 they do represent industrial, agricultural, municipal government
19 representatives on our Board. They have proven to think
20 critically, independently, keeping their expertise in mind has
21 resulted in better decisions for San Diego water quality than
22 we've ever had before.

23 This is why, frankly, we are concerned about
24 Mr. Milch. He does not represent the most sensitive uses of
25 fish, wildlife, and swimmers of the sea. Listen again to his
26 statement from his letter to you, quote: "California's major
27 water quality issue is having an adequate supply of good water
28 for our state's residential, agricultural and industrial needs,"

1 end quote.

2 No mention of the safety of eating the fish. No
3 mention of the water quality that our tourism is dependent on.

4 The state program to protect water is dependent
5 on the Governor appointing a balance of interests. If Mr. Milch
6 was here occupying the water quality chair, the agriculture
7 chair, or the industrial position, we might not be here today.

8 However, he does not. He's occupying the chair
9 responsible for public and environmental health, and the
10 sensitive uses of surface waters.

11 We're here today to ask you not to undo the good
12 work of the past Rules Committee.

13 In conclusion, Mr. Milch is not qualified to
14 represent and defend San Diego water quality for use by
15 fishermen, wildlife, or water contact recreational users. The
16 bottom line is, there's specific Water Code regulation regarding
17 the qualifications for a person who occupies this position.

18 He has not, certainly to our satisfaction,
19 demonstrated that he represents an NGO, associated with or
20 expertise in fish, wildlife or water contact recreation. His
21 comments and voting thus far do little to assure us.

22 An attorney who represents Bay polluters directly
23 or in counsel is not an acceptable representative for the most
24 sensitive uses of coastal waters.

25 Please do not turn back the clock for San Diego
26 water quality. Please oppose his confirmation to the fish,
27 wildlife and recreation chair.

28 Thank you for your time.

1 SENATOR LEWIS: Thank you. Any questions for
2 this witness?

3 SENATOR AYALA: You have concerns that he
4 doesn't qualify for the category --

5 MS. HUNTER: Yes.

6 SENATOR AYALA: -- of one person from a
7 responsible nongovernmental organization associated with
8 recreation, fish, or wildlife?

9 MS. HUNTER: Right.

10 SENATOR AYALA: He's counsel to Sea World. That
11 doesn't come under recreation?

12 MS. HUNTER: No, sir. That's on the wrong side
13 of the issue, I think. I think that's on the wrong side of the
14 issue.

15 SENATOR AYALA: Straighten me out.

16 MS. FRYE: I think my testimony might answer that
17 question for you.

18 SENATOR AYALA: I'm sorry?

19 MS. FRYE: I think the testimony I'm about to
20 give might clarify that.

21 SENATOR AYALA: If you want to straighten me out,
22 okay.

23 MS. FRYE: Well, not straighten you out, but it
24 might answer your question, sir. Straighten out the question;
25 not you.

26 SENATOR AYALA: I yield.

27 MS. HUNTER: If she doesn't, then I'll respond
28 when I come back.

1 MS. FRYE: My name is Donna Frye, and I am the
2 founder of Surfers Tired of Pollution.

3 I am also the co-owner of Skip Frye Surf Boards.
4 In fact, I closed my business today to attend this hearing.

5 My involvement in water quality issues came about
6 as a result of the frequent and numerous complaints I was
7 hearing from members of the surfing community regarding
8 ocean-related illnesses.

9 As a business owner who depends on clean water to
10 make a living, clean water is my bottom line. I am here to
11 testify in opposition to the appointment of Mr. James Milch to
12 the San Diego Regional Water Quality Control Board.

13 There is number of questions that I asked myself
14 before doing this. The first question I asked was, does
15 Mr. Milch meet requirements for this position as set forth in
16 the Water Code?

17 It does not appear to me that Mr. Milch meet the
18 requirements or has expertise necessary to represent the
19 interests of fish, wildlife, or recreation as required in the
20 Water Code. The Water Code states that this person shall be
21 from a responsible nongovernmental organization associated with
22 recreation, fish, or wildlife.

23 It is unclear exactly which NGO Mr. Milch is
24 currently associated with that represents any water dependent
25 activity, not to mention fish or wildlife. The mere fact that
26 he is a cash contributor to the nonprofit Friends of the Park
27 does not appear to meet the basic criteria set forth in the
28 Code, nor does it meet the spirit or the intent of the Code.

1 While it is indeed praiseworthy that Mr. Milch
2 also donates money to the Old Globe Theater and the San Diego
3 Zoo, his charitable contributions should not be considered as a
4 qualification for this position.

5 The second question I wondered was, would this
6 appointment ensure a reasonable balance of interests on our
7 Regional Board? It also seems that the intent of the Water Code
8 ensure that a reasonable balance is struck on the Board so that
9 all interests are adequately represented. This position
10 requires that the selected candidate represent recreation, fish,
11 or wildlife, not interests of corporate clients whose positions
12 are frequently at odds with the protection and preservation of
13 our coastal resources.

14 Does Mr. Milch's letter to the Senate Rules
15 Committee accurately represent his voting record? We are also
16 concerned about some of the comments made in Mr. Milch's letter
17 to the Committee, as also stated by Laura Hunter with EHC. Of
18 particular concern is his representation of the vote he made
19 regarding Southern California Edison's request to increase the
20 temperature of its discharge water.

21 I was at that hearing on an unrelated matter, and
22 I do know he voted to approve the increase.

23 We are also concerned about his future conflict
24 of interests. Is it reasonable to expect that the Board member
25 representing recreation, fish or wildlife be able to vote on
26 decisions affecting Mission Bay Park, one of the largest aquatic
27 parks in San Diego, as it relates to Sea World?

28 Last Wednesday, I had opportunity to observe and

1 speak with Mr. Milch at a San Diego City Council committee
2 meeting. The meeting was in regard to the proposed 16.5 acre
3 expansion of Sea World into public parkland. Mr. Milch was
4 there for Sea World. I was there for Surfers Tired of Pollution
5 to speak about the fact that Sea World is treating only 14
6 percent of the polluted runoff from the exiting Sea World
7 parking facility. The remaining 86 percent is being discharged
8 with little, if any, treatment, all at taxpayer expense.

9 I was also concerned about the fact that Sea
10 World representatives such as Mr. Milch would not identify what
11 they planned to build if the expansion into our diminishing
12 public parkland was approved. Plus, there is great concern in
13 San Diego about Sea World's attempt to receive a blanket
14 exemption for their existing 150-acre leasehold, as well as the
15 proposed expansion from the 30-foot height limitation in the
16 coastal zone.

17 Again, Sea World's representatives would not
18 identify a specific proposal, citing that the information was
19 proprietary.

20 These issues will come before the Regional Board,
21 since Sea World's expansion plans would require at minimum an
22 modification to their NPDES permits.

23 Clearly, Mr. Milch has a conflict of interest as
24 it relates to Sea World. Who will be there to represent
25 recreation, fish, or wildlife if Mr. Milch excuses himself from
26 voting?

27 STOP respectfully requests that this Committee
28 oppose the confirmation of Mr. Milch.

1 Thank you for your time and consideration, and I
2 hope that answered some of your questions.

3 SENATOR LEWIS: Senator Ayala.

4 SENATOR AYALA: Yes.

5 You're suggesting that Item Six, again in the
6 Water Code, 13206, read that member should be a voting member of
7 an organization associated with recreation, fish, and wildlife?
8 A voting member of the organization?

9 MS. FRYE: What I am suggesting is that it be a
10 representative. That would be someone that would actually be
11 speaking for that Board, that actually represents an activity or
12 an organization related to recreation, fish or wildlife.

13 I think as Laura Hunter pointed out, that isn't
14 the case.

15 SENATOR AYALA: I'm not trying to defend him, but
16 seems to me that if he's of counsel, and you are the general
17 counsel, or something, of Sea World?

18 MR. MILCH: Yes. But I would not use Sea World
19 as my credential of being involved with recreation and
20 wildlife.

21 SENATOR AYALA: You'll speak to that later.

22 MR. MILCH: Yes, sir.

23 MS. HUNTER: Mr. Ayala, could I say one more
24 minute on that?

25 I think it's just important to note that even
26 though people like to go there, Sea World is a corporate
27 interest in San Diego. It's an amusement park. It is not a
28 surface water quality dependent activity.

1 It discharges wastes to our surface waters, but
2 it is not a recreational activity dependent on clean water. I
3 think that is the point. It shows, because they are a
4 discharger with a permits.

5 In fact, when their permit comes before Regional
6 Board, Mr. Milch, as their counsel, will not even be able to
7 vote on that.

8 So it's not the exact right thing.

9 SENATOR AYALA: Thank you.

10 SENATOR LEWIS: Thank you very much.

11 Mr. Milch, would you respond to the point about
12 the qualification?

13 MR. MILCH: Yes, Senator.

14 It was suggested that if you really want to make
15 this easy, talking to me, join an anglers' club, or show your
16 membership in the Natural Conservancy, or something else, for
17 \$25 a year. I could have done that.

18 I did not do that as far as fishing goes. I
19 didn't do it purposely on any of the other recreational areas.

20 But contrary to what my friends have said, I
21 think the involvements that I have had and continue to have,
22 especially as relate to the recreational areas in San Diego,
23 show strong support of that particular area of the Code.

24 We can't be all things to all people. I can't be
25 a member of their organizations, and this organization, that
26 organization.

27 What we have to do is carry through in the spirit
28 of what that Water Code section calls for. And I believe, with

1 probably 30 years of involvement, which continues now, well
2 beyond just financial contribution, that I fulfill the spirit of
3 that Code section.

4 But I did want to clarify, although Senator Ayala
5 made it sound good, that my involvement with Sea World -- which,
6 I have to say, has one of the finest records relating to
7 pollution control and honoring of their permit -- they have not
8 been before the Water Quality Control Board certainly during my
9 period of time, and I don't know when they were last there.
10 They have never been cited for any problem, so I'm glad I
11 represent them. But obviously, I could not sit at any hearing
12 involving them.

13 I'm proud to be associated with them, but I
14 couldn't participate. But everybody has conflicts along the
15 way. You can't examine whose friends, whose clients a
16 particular Board member has and say, there's going to be a time
17 when that person comes up before you, and thus, you shouldn't be
18 sitting on the Board for the ten thousand other things that you
19 adjudicate and rule upon.

20 I will try to be a fair Board member. I will try
21 to be an honest Board member, and I will avoid any conflicts.

22 The one conflict that the Environmental Health
23 Coalition spoke of, I brought up at the beginning of the meeting
24 and asked our board counsel under the facts, if I had a
25 conflict, and he said no. This is even though Ms. Hunter said I
26 should recuse myself. But I have to go with what the counsel
27 says on those matters, or else every time a member of the public
28 comes up and says, "Don't participate," they have just lost one

1 member.

2 SENATOR LEWIS: Mr. Milch, to bring some closure
3 to this issue, since you don't want to use Sea World as your
4 example, the Code does say, "One person from a responsible
5 nongovernmental organization associated with recreation, fish,
6 or wildlife."

7 What responsible nongovernmental organization are
8 you associated with or affiliated with?

9 MR. MILCH: I am affiliated with the Friends of
10 the Park. I am affiliated with about seven organizations in
11 Balboa Park. Although it is not water dependent except for
12 irrigation, it is one of our recreation cores.

13 I have been very strongly involved, and this is
14 historically, with Mission Bay. When I was Chairman of the
15 City's Park and Rec. Board for eight or ten years, I basically
16 over saw the development of the Mission Bay Master Plan, then in
17 composition.

18 So, I would say I am not a wet part of the Code,
19 although, as I said in my letter, I'm a swimmer. I swim in the
20 ocean, I fish in the ocean. I am not a card-carrying swimmer or
21 a card-carrying fisherman, but I am a card-carrying recreation
22 person.

23 SENATOR LEWIS: It seems from my point of view
24 that it's certainly a close call, and it'll be ultimately up to
25 this Committee to make that judgment.

26 MR. MILCH: Yes, sir.

27 SENATOR LEWIS: I wanted to ask, though, about
28 the question about whether or not, since you'd be recusing

1 yourself on any potential conflicts involving Sea World, on this
2 particular Board, when you abstain or are conflicted out on
3 something like that, what is the impact of that vote? Do you
4 have to have a majority of the Board voting to pass a measure?

5 MR. MILCH: We have nine Board members, and I
6 don't know what the rules are.

7 MS. HUNTER: I can speak to that.

8 SENATOR LEWIS: Just to boil it down, would your
9 abstention, if Sea World was trying to gets some kind of a
10 permit, or variance, or whatever, and you were conflicted out
11 and had to abstain, does that have the same effect basically as
12 a no vote?

13 MS. HUNTER: Well, it leaves you with eight,
14 provided no one has to recuse themselves. Then, instead of nine
15 Board members, you have eight.

16 SENATOR LEWIS: And they need five affirmative
17 votes?

18 MS. HUNTER: Yeah, you would.

19 What you don't have is anybody at the table who
20 represents fish, wildlife or recreation.

21 See, each person has a role and expertise.
22 There's a public; there's an ag. So, the fish, wildlife and
23 recreation is not at the table anymore. They're gone.

24 SENATOR LEWIS: At least in terms of this
25 particular issue, where you're concerned that he has a conflict
26 of interest, and he admits that he does, and he's going to
27 recuse himself at least on that particular question, you can't
28 do any better than knowing that at least you have one member

1 that can't possibly vote on behalf of Sea World.

2 MS. HUNTER: But nobody up there is defending or
3 brings expertise about fish, wildlife, and recreation. So, when
4 we're looking for the balance of interests, it's gone. Because
5 that most sensitive use of the water is completely undefended on
6 the Board. That's why it's a very serious issue.

7 Even though we still need the five votes, the
8 whole interest, the whole everything, it's gone. We have no
9 defender.

10 SENATOR AYALA: Point of information that I'd
11 like to inquire about.

12 SENATOR LEWIS: Just a minute.

13 Mr. Milch, you were going to comment?

14 MR. MILCH: I would say that in each of the
15 special categories of membership -- there's an agricultural
16 member. There is, I think, a water member -- each of them have
17 the potential of having a conflict when it touches upon that
18 very specific area. And each of those members would be required
19 to step down if they had such a conflict.

20 So, I don't think it's the problem that
21 Ms. Hunter indicates.

22 SENATOR AYALA: I'd like to inquire, are you
23 familiar with, the ladies here, with Harriet Stockwell?

24 MS. HUNTER: I am.

25 SENATOR AYALA: What was her background?

26 MS. HUNTER: My understanding was that her
27 qualification, her simple qualification to be on the Board was
28 that she was a member of something like the National Wildlife

1 Federation, that she had a simple membership in that
2 organization.

3 I would agree with Mr. Milch. I don't think
4 that's adequate or enough. I think that is not in alliance with
5 the intent of the Water Code.

6 The Water Code means to have somebody there who
7 defends those interests, who has a demonstrated knowledge about
8 it.

9 SENATOR AYALA: What about in a Donna Damson?
10 What was her background?

11 MS. HUNTER: Donna Damson was appointed because
12 she was a representative. She worked in the Zoological
13 Society's public relations department.

14 SENATOR AYALA: For whom?

15 MS. HUNTER: Zoological Society public relations
16 department.

17 We did not oppose her because we had a policy of
18 trying to work with the people that come, and since she hardly
19 ever spoke, frankly, on any issue --

20 SENATOR LEWIS: So, you only selectively bring
21 about this opposition.

22 MS. HUNTER: Well, I don't think that's entirely
23 fair. We bring it up when it's clear that the interests are not
24 being served. The point of the balance of the interest, and I
25 think --

26 SENATOR LEWIS: Let's be fair. You're making a
27 major point out of him not being qualified because of your
28 reading of this Code section.

1 MS. HUNTER: Yep.

2 SENATOR LEWIS: I think Senator Ayala has just
3 asked a very valid question, which you seem to be rather
4 inconsistent on.

5 MS. HUNTER: We don't oppose every appointee that
6 comes down. We oppose the ones that we think are inappropriate
7 for the position.

8 I want to also say that the conflict issue, you
9 know who it comes up with the most on our Regional Board? It's
10 going to come up with Mr. Milch, and it came up with Mr. Loriman
11 because he was sitting in the public spot, and his law firm and
12 himself was the attorney for a number of Bay polluters.

13 So, it's the attorneys that are ending up being
14 conflicted again and again and again on these issues.

15 We are committed to try to work with the
16 appointees that we are sent. When we can't, when they are
17 clearly defending the interests of the polluter, when they are
18 clearly not defending the interests that they were appointed to
19 represent, then we're here.

20 We can't come up here every day, and we don't do
21 that. We try to work with the people that are appointed. In
22 this case, it's nothing personal against Mr. Milch. He's a very
23 nice person. He just doesn't represent the interests of the
24 position that he fills.

25 SENATOR LEWIS: Any other questions, Senator
26 Ayala?

27 Senator Hughes.

28 SENATOR HUGHES: Thank you very much. It's really

1 been some interesting testimony, but it hasn't answered all of
2 the questions that are still in my mind.

3 I'm really charmed by the fact that you do a
4 couple of things that I don't do, and I admire you for it. I
5 enjoy fish, but I can't catch them. I like to watch people
6 swim, but I can't swim. So, you've got two strikes ahead of me.

7 But as I read this category that Senator Ayala
8 continued to read, and witnesses up before us read, it says,
9 "One person from," and I guess this is about the fourth time
10 you've heard this, but I want to repeat it again. "One person
11 from a responsible nongovernmental organization associated with
12 recreation," and you cited some of the organizations that you
13 belong with. I didn't hear you site anything with fish or
14 wildlife.

15 And then in the preamble to this category in the
16 Water Code, it says, "Each Board shall consist of following nine
17 members appointed by the Governor, each of whom" -- each of
18 whom -- "shall represent or act on behalf of all the people and
19 should reside or have a principal place of business within the
20 area," and it lists these other categories.

21 Could you tell me the other categories that we
22 did not mention?

23 You did a great job on the recreation area, but
24 this is a water control board. You didn't say anything
25 specifically about fish or specifically about wildlife.

26 Would you do that now, please?

27 MR. MILCH: Yes. Specifically about fish, as I
28 say, the best I can do is that I fish in the lakes and in the

1 ocean, and more particularly in recent years, in the Sea of
2 Cortez. And I am a financial supporter of organizations
3 relating to the Sea of Cortez to keep these waters pure.

4 SENATOR HUGHES: You know, I was also a little
5 bit confused, because I know you're a bright man. If you
6 weren't, you wouldn't be a member of a major law firm that is
7 counsel to several entities.

8 But you said just a few minutes ago, when we were
9 discussing I think it was a question from Senator Lewis that
10 said something about how many votes does it take, and you said I
11 don't know. And you said, I don't know what the rules are.

12 And in the next moment, after one of the
13 witnesses up at the table said it took eight votes, I believe,
14 or the question was did it really take five votes, and you said,
15 yes, it takes five.

16 So, you do know. Are we getting you upset?

17 MR. MILCH: No, you're not, Senator.

18 SENATOR HUGHES: But you're getting me confused,
19 because I really want to know where you're coming from.

20 MR. MILCH: My first thought when I heard the
21 question was, was there a special rule of counting the majority
22 when a person has abstained, as opposed to being just absent?

23 SENATOR HUGHES: Can you answer that question?

24 MR. MILCH: And then I thought a little more
25 logically that it takes five votes for a majority if you have
26 nine, and it still takes five votes for a majority if you have
27 eight.

28 SENATOR HUGHES: Right. So, you do know the

1 rules. So, we were confusing you. I guess we have to plead
2 guilty.

3 The other thing is that, you know, all of these
4 other categories are specific. Your category is specific in
5 three different areas.

6 You've spoken well for the area of recreation
7 because you enjoy the recreational facilities yourself, but in
8 terms of your expertise in reference to fish, other than being a
9 fisherman and probably a consumer -- I hope you eat the good
10 things that you catch, or at least capture them and put them in
11 captivity somewhere so that you can look at them -- and in
12 wildlife, those are two other areas, those are two major areas
13 where you have not exhibited, to my satisfaction, your areas of
14 expertise.

15 Now, when it gets to the legal matters, and
16 whether you do in fact have a conflict or not, I think you
17 indicated you do not vote on those issues that you think it
18 would be a conflict in.

19 I would hope that we could put this discussion
20 over, because you've been on the Board not fully a year yet.
21 And you do have some more time so that we could explore some of
22 these areas. And I would like to afford Senator Burton an
23 opportunity to hear from you, an opportunity to review your
24 application and give us some guidance and counsel in this area.

25 And I don't want him to feel disenfranchised.
26 I'm certain he was unable to be here today, but I appreciated
27 the having the opportunity to hear what you had to say.

28 I would request of the Committee that we put this

1 over at least for a few days to allow the Senator, who is not
2 present and Chair of this Committee, to have an opportunity to
3 meet you and to listen to your case a little more.

4 MR. MILCH: Senator, if I could make one
5 observation.

6 As to the category assigned to me, I don't
7 believe that it is intentional that the candidate have
8 preeminence in each of those fields: fishing, wildlife, and
9 recreation.

10 I think that that it is a choice of those that
11 the candidate should come from.

12 SENATOR HUGHES: Well, you know, there's some of
13 us who don't recreate at all, so we would never fit in any of
14 those categories. And there's some people who never eat fish,
15 look at fish, or like fish, and there are city folk like me that
16 know very little about wildlife, other than wild cats or stray
17 dogs. So, we could be excluded from that area.

18 But what I'm asking the Committee to do is to
19 just give us a chance to further mull over this. We've gotten a
20 lot of correspondence in reference to you, both good and bad.
21 Give us a chance to make the right decision.

22 SENATOR LEWIS: Mr. Milch, that's a standard
23 courtesy that we extend to every one of the Members here, is to
24 allow a vote to be postponed to a later date. We can do so
25 without jeopardizing your confirmation.

26 So, we're going to put this matter over.

27 MR. MILCH: Very good.

28 SENATOR LEWIS: Thank you for sharing your time

1 with us today.

2 MR. MILCH: Will that be another hearing, sir?

3 SENATOR LEWIS: That will be up to Senator
4 Burton.

5 SENATOR HUGHES: He is the only one who hasn't
6 had a chance to ask you on a question.

7 MR. MILCH: Very good.

8 SENATOR LEWIS: Thank you.

9 Going back on schedule, we have next up
10 Dr. Thomas Joas, Member, Medical Board of California, Division
11 of Licensing.

12 Doctor.

13 DR. JOAS: Good afternoon.

14 Thank you for the opportunity to appear before
15 you today.

16 I am Dr. Thomas Joas, appointee to the Division
17 of Licensing of the Medical Board of California. I have served
18 on the Medical Board for over four years and currently serve as
19 its President.

20 These have been very productive years for the
21 Board. There have been remarkable changes made which have
22 improved the protection of Californians who use the services of
23 the 104,000 physicians licensed to practice medicine in this
24 state.

25 Major issues have confronted the Board during
26 this time and have had a direct impact on the patient consumer
27 and how they use the services of the medical community. Some of
28 these include enhanced public information.

1 The Board has consistently supported the
2 expansion of information made available to the consumer. The
3 most recent expression of this is the support of AB 103,
4 Figueroa, passed in last year's session, and implemented in
5 January of this year.

6 As a result, California now makes available to
7 the public on the Internet or by telephone a doctor's name,
8 business address, license status, year first licensed, any
9 licensing disciplinary history, loss of hospital privileges,
10 criminal history, and malpractice judgments or arbitration
11 awards.

12 With the exception of Massachusetts, this is the
13 most open and informative medical consumer information program
14 in the nation.

15 Specialty board advertising is another issue
16 which we have addressed. The Division of Licensing developed
17 standards which enable the enforcement of restrictions on a
18 physician's ability to advertise as being board certified unless
19 they are a diplomat of a board approved by the American Board of
20 Medical Specialties, or approved as equivalent by the Medical
21 Board of California.

22 This action has limited the ability of physicians
23 to potentially mislead consumers by advertising board
24 certification in a specialty which does not have the rigorous
25 standards of additional training and experience required by ABMS
26 boards.

27 Other issues encountered by the Division have led
28 to programs or policies which have resulted in consumer

1 protection in a more indirect way, through the licensure
2 requirements or restrictions placed on physicians and other
3 medical professionals. These include midwifery licensure.

4 I chaired the committee which worked diligently
5 over many meetings to define and establish the standards which
6 led to the first ever lay midwife license in California.
7 Expectant mothers who use the services of a midwife can now be
8 assured that they meet the qualifications and training which
9 assure their competence to practice safely.

10 Out-patient facility accreditation. The Division
11 has developed regulations and implemented a program by which
12 facilities where out-patient surgery is performed are required
13 to be accredited. This accreditation assures that a variety of
14 personnel and facility standards have been met if a patient has
15 surgery in that facility.

16 Notwithstanding the above measures to improve
17 facility standards, we have become aware of the growing use of
18 these facilities in the performance of certain cosmetic surgical
19 procedures which have led to tragic outcomes. The Board has,
20 therefore, established a Plastic Cosmetic Surgery Procedures
21 Committee, of which I am a member, which is investigating the
22 cause of some of these problems and what measures can be taken
23 to limit their occurrence.

24 Another issue related to improved patient care
25 includes a matter which has been brought to the attention of
26 this Committee, and which I believe has been presented most
27 unfairly. Specifically, it has been alleged that I have shown a
28 bias toward some group or groups because of work that I

1 performed leading to the repeal of Section 1324 of the
2 California Code of Regulations.

3 Section 1324 allowed for non-ACGME accredited
4 sites to offer training to international medical graduates in
5 fulfillment of the final requirement for physician licensure.
6 It was only program in the nation which allowed for such
7 training in a setting not approved by the Accreditation Council
8 for Graduate Medical Education, the agency which establishes
9 postgraduate training standards for physicians.

10 Let me express the concerns which arose from our
11 study of these programs. We compared a group of international
12 medical graduates in ACGME approved programs and those -- and a
13 group of those trainees in the 1324 Program.

14 First of all, the ACGME programs are customarily
15 in teaching hospitals. Teaching hospitals are usually
16 affiliated with universities which have wide variety of
17 disciplines and opportunity for trainees to avail themselves of
18 additional education.

19 1324 Programs exist in community hospitals where
20 the primary mission not teaching but patient care.

21 The trainee in an ACGME approved program receives
22 a stipend. The trainee in a 1324 Program pays for the
23 training.

24 Another cause for concern was the passage rates
25 on examinations. The written failure rate among those having
26 trained in an ACGME approved program was 17 percent. Those
27 international medical graduates which trained in the 1324
28 Program failed the written exam by 60 percent.

1 The oral failure rate among those trained in an
2 ACGME approved training program was zero. Those trained in a
3 1324 Program was 16 percent.

4 The number of consumer complaints lodged against
5 trainees having trained in an ACGME approved program was one.
6 The number of complaints lodged against those having trained in
7 a 1324 Program was three. This doesn't seem like a great
8 disparity.

9 SENATOR HUGHES: May I ask a question at this
10 point?

11 SENATOR LEWIS: Yes, Senator Hughes.

12 SENATOR HUGHES: Now, in 1324 Programs, these
13 potential physicians pay to be in the program?

14 DR. JOAS: Yes, ma'am.

15 SENATOR HUGHES: And they have no sort of
16 guarantee that they're going to pass these tests? Or, they pay
17 to get licensure?

18 DR. JOAS: No. What I'm saying is, they pay for
19 the training that they receive in these institutions.

20 SENATOR HUGHES: Yes.

21 DR. JOAS: There is no guarantee from any
22 institution, whether it be university affiliated, 1324, or some
23 other training program. There's no guarantee that anybody will
24 pass an examination.

25 SENATOR HUGHES: So, when they set up this
26 Section 1324, what was the reason for setting it up? To show
27 that we had no bias in this state against anyone who was a
28 foreign medical graduate? Was that the purpose of it?

1 Or, was the purpose of it to encourage people, to
2 encourage physicians to serve in the rural and underserved areas
3 of the state? Was it both purposes; do you know?

4 DR. JOAS: Yes. My understanding was that if the
5 program was set up, that the people that had trained in those
6 programs would do a couple of things. They would go to their
7 particular ethnic communities and serve, as well as serving
8 underserved areas in both rural and urban areas.

9 And also at that time, there were a significant
10 number of farmworkers who had no access to medical service. And
11 it was the intent of the program, going back through the
12 legislative history of the program, it was the intent of the
13 program that these individuals would move into those communities
14 as well.

15 We also have some statistical evidence, both in
16 California and nationally, which suggests that that isn't true.
17 And as you know, the Medical Board is not a medical distribution
18 system.

19 There is no way that we can guarantee that
20 someone that graduates from any training program will go where
21 ever. Most people go where they feel they can find a spot, a
22 nitch, and make a living.

23 It's a free-moving society, unlike a country like
24 Canada, for example. I trained in Canada. So, in a sense, I'm
25 a foreign medical graduate.

26 SENATOR HUGHES: But you went to an accredited
27 hospital.

28 DR. JOAS: Certainly. I trained in Canada. I

1 passed my examinations, and I'm an American citizen. But I
2 fooled around in college, didn't have the grades, and went where
3 I could get an education, and that was in Canada. And I don't
4 regret it for an instant. It taught me a lot about my own
5 country.

6 Believe me, for those people who believe that
7 Canada is the 52nd state, all you have to do talk to a Canadian
8 and you understand that it isn't the 52nd state. It's a foreign
9 country.

10 And I trained in San Francisco, at the University
11 of California in San Francisco.

12 SENATOR HUGHES: Yes, but you then trained at an
13 accredited hospital.

14 DR. JOAS: Yes, ma'am.

15 SENATOR HUGHES: Is that what made the difference
16 you feel in your ability to be able to pass the required
17 examinations to get licensure?

18 DR. JOAS: No. I think it was my own ability to
19 go through medical school. And I think it was my ability to
20 achieve what I wanted to achieve within my training.

21 I had passed all the examinations by the time I
22 was accepted for additional training at UCSF.

23 SENATOR HUGHES: But even though these
24 applicants, these trainees, are 1324 participants, they, when
25 they go to community hospitals, these are not necessarily
26 accredited institutions? These community hospitals, they are or
27 are not?

28 DR. JOAS: We could talk about accreditation in

1 different ways.

2 They are accredited by the Joint Commission.

3 SENATOR HUGHES: Right.

4 DR. JOAS: But they're not accredited by the
5 Accreditation Council for Graduate Medical Education.

6 SENATOR HUGHES: As a teaching institution.

7 DR. JOAS: Exactly, and that's the difference, in
8 my mind.

9 SENATOR HUGHES: Right. Thank you very much.

10 DR. JOAS: So, going on with the comparison, and
11 looking at the consumer complaints, and recalling that the total
12 number of trainees in 1996, there were 8,662 trainees in ACGME
13 approved programs, and 1100 of those were international medical
14 graduates in ACGME approved programs.

15 In the 1324 Program there were seven. And if you
16 compare the number of complaints to the total number of
17 international medical graduates in training in 1996, this number
18 now becomes much more apparent.

19 Consumer complaints among those that trained in
20 ACGME approved programs was one in 1100 -- one in eleven
21 hundred. For those in 1324 Programs, it was 3 out of 7, okay.

22 SENATOR HUGHES: Are you aware --

23 DR. JOAS: May I just finish with my table,
24 please. Thank you.

25 So, if I could expand on that a little bit
26 further, after the national matching program occurs in
27 California, there are still available the National Residency
28 Matching Program occurs in California. There are still, after

1 that program occurs, 200 slots in California in acceptable
2 training programs that are left unfilled, which are up for grabs
3 by any qualified applicant, whether it be an American medical
4 school graduate or an international medical school graduate.

5 That was the final point that I wanted to make.

6 SENATOR HUGHES: Are you aware that any 1324
7 Programs that regularly trained foreign medical students, are
8 you aware that any of these students then went on to pass their
9 licensing test?

10 DR. JOAS: Yes, some of them did.

11 SENATOR HUGHES: Any idea how many?

12 DR. JOAS: I can't tell you how many, Senator,
13 because the information -- I don't have that information
14 available to me, but I can certainly get that information.

15 SENATOR HUGHES: I would appreciate that. Thank
16 you.

17 DR. JOAS: So then, I made the decision, faced
18 with this data, that I supported the termination of this program
19 along with the other members of the Division of Licensing, so
20 that I was one of seven unanimous votes supporting abolishing
21 the program.

22 One of the other things that the opposition has
23 stated is that because of this, I'm biased. But at the time
24 that we abolished the program, I said -- I directed the staff of
25 the Medical Board to make us, the Medical Board, more user
26 friendly in getting information available to foreign medical
27 graduates or international medical graduates as to the
28 availability of ACGME approved programs after the match had

1 occurred.

2 The other charge which is offered to claim that I
3 am biased is that I led a move to eliminate the 2112 Program.
4 The facts do not bear out this charge. In my tenure on the
5 Board, we have reviewed seven 2112 Programs and ultimately
6 recommended approval of four.

7 The three for which I, as one member of a review
8 team, did not recommend approval include the VA Hospital in San
9 Francisco because California has no jurisdiction over federal
10 facilities, Keoywa Delta Hospital in Visalia because it proposed
11 as the outstanding specialist someone who resided and practiced
12 in Oregon and precluded his ability to provide meaningful
13 direction and guidance, and Davies Medical Center in San
14 Francisco, because in the opinion of the review committee, the
15 program director did not meet the standard of outstanding
16 specialist.

17 In summary, please consider the totality of my
18 record as you determine the standards which a member of the
19 Medical Board of California should possess. I believe that my
20 record indicates that I have remained true to the ideal of
21 public protection through efforts discussed here today, and in
22 all of other work that I have performed on behalf of
23 California's public. It was in the pursuit of and consistent
24 with the goals of protecting the public that I have taken the
25 the position which we are now discussing.

26 I urge that you separate the interests of the
27 few, who would protect their own turf, from the many that look
28 to the Medical Board and its members to protect their health.

1 Thank you.

2 SENATOR LEWIS: Thank you.

3 Senator Ayala for questions.

4 SENATOR AYALA: Doctor, you were in involved in
5 abolishing 1324 regulations?

6 DR. JOAS: Yes, sir.

7 SENATOR AYALA: Can you tell us, briefly, why you
8 did that?

9 DR. JOAS: I have to say that I was involved in
10 it, but I was involved in it with a group of people.

11 SENATOR AYALA: Why did you do it? Why was that
12 done?

13 DR. JOAS: I thought that the 1324 Program
14 perpetuated a lower level of training for a group of people that
15 needed a higher level of training.

16 If I would have been king, I would have said,
17 "Please go to an ACGME approved program and take your chances.
18 there, because you'll get extremely well-qualified people out of
19 those training programs."

20 So that -- I did not want to see the consumers of
21 the State of California be open to a two-tiered type of training
22 background. That was my perception of the training program, and
23 those persons on the Division of Licensing at the time that we
24 proposed abolition of the program saw it unanimously way as I
25 did.

26 SENATOR AYALA: So you actually were opposed to
27 lowering the bar for the practice of quality medicine?

28 DR. JOAS: I am opposed to lowering the bar,

1 absolutely. I think that California deserves, and I think that
2 California, by and large, has excellent medical care.

3 And I think that it's the mission of the Medical
4 Board to continue to proceed serve that through consumer
5 protection, vigorous enforcement of licensing, and vigorous
6 enforcement of the Medical Practice Act.

7 SENATOR AYALA: I have a problem with lowering
8 the bar for any reason, even though it could help underserved
9 areas.

10 Why do we want to give them inferior medical
11 practice just because they happen to be in the underserved
12 areas? They should get just as good a quality of medical
13 practice as anywhere else, downtown Los Angeles, as far as I'm
14 concerned.

15 And that goes for, people that are telling me
16 that veterans are homeless, and they should be given some kind
17 of treatment by providing the psychologist to provide prescribed
18 medicine. That's ridiculous. Those veterans are entitled to as
19 good quality medical treatment as anybody else is, and I would
20 oppose any lowering of the bar for any reason, especially when
21 it comes to the practice of medicine.

22 DR. JOAS: Senator, I agree with you.

23 SENATOR LEWIS: Dr. Joas, I know we're going to
24 have a little more about this when we hear some additional
25 testimony.

26 I wanted to just change topics real quickly for a
27 second and ask about physician discipline.

28 DR. JOAS: Yes.

1 SENATOR LEWIS: Although some improvements have
2 been made speeding up the time table, it still hasn't kept up
3 with going through the whole process. I think it takes three
4 years ultimately to bring about, on average, a discipline.

5 It hasn't yet met legislative targets.

6 What particular ideas or suggestions do you have
7 to speed up the whole process.

8 DR. JOAS: Okay. There are a couple things that
9 have occurred so that the -- to speed up the process.

10 One of those is putting a deputy district
11 attorney in the district office, which we did -- which we have
12 done on a trial basis, and will now be expanding because it has
13 shortened the time remarkably that it takes to bring charges
14 against or throw out a case. So, that's something that we were
15 in the process of doing. That's something that we testified to
16 at the Sunset Review Committee, and that's something that we
17 will be expanding, so that by, I believe, July of this year,
18 there will be a deputy district attorney in all of our twelve
19 district offices throughout the state.

20 And if you could see the table -- and again,
21 I'm sorry. I don't have the table with me -- but if you could
22 see the table, it's a significant time reduction in the time
23 that it brings opening a case or closing a case. I'm thinking,
24 like, the change has been almost 70 percent.

25 The other issue is recruiting and retaining good
26 enforcement people. As you know, they are all sworn peace
27 officers, but the workload in areas like Los Angeles is
28 unbelievable. And our budget is limited by licensing fees.

1 So that we currently have a bill before the
2 Legislature to increase licensing fees in order to expand our
3 budget, and therefore, hopefully, recruit more talented people
4 that could live in areas such as Los Angeles and carry a
5 higher -- and carry a lesser caseload so that some of those
6 cases would come to conclusion more quickly.

7 SENATOR LEWIS: Thank you.

8 At this time, let's proceed with anyone wishing
9 to testify in favor of the confirmation.

10 MR. BARNABY: Mr. Chairman and Members, I'm Bill
11 Barnaby, representing both the California Society of
12 Anesthesiologists and myself here today.

13 I've had the pleasure to work with Dr. Joas for
14 over fifteen years. I know him as a decent, honest, caring
15 person with a strong and abiding commitment to the practice of
16 quality medicine in this state. He's well known in the medical
17 community for his efforts to set up peer review programs in the
18 California Society of Anesthesiologists, for example; for his
19 insistence on quality medical care in his own practice and among
20 his colleagues the San Diego.

21 He's an outstanding physician and outstanding
22 citizen. I'm very proud to urge that he be confirmed here
23 today.

24 Thank you.

25 SENATOR LEWIS: Thank you, Mr. Barnaby. Next.

26 MR. SYPHAX: Scott Syphax for the California
27 Medical Association.

28 We, too, support the confirmation of Dr. Joas.

1 We have worked with Dr. Joas for the past four years in his
2 capacity as a member of the Medical Board, and we have found him
3 to be fair, open-minded, and very responsive to both the
4 concerns of the citizens of California in terms of patient
5 advocacy, and also to the medical profession itself in terms of
6 trying to work creatively in order to enhance the quality of the
7 medicine that is delivered in California.

8 With respect to the 1324 Program, for the record,
9 CMA supported the abolition of this program for the reasons that
10 Dr. Joas stated.

11 In fact, oftentimes in front of the Medical
12 Board, the California Medical Association is sometimes in
13 opposition with some of the consumer advocacy groups and also
14 members of the Board. Dr. Joas does not always agree with us on
15 any ranges of issues. As a matter of fact, he usually disagrees
16 with us more than he agrees with us.

17 However, there was a broad consensus from all
18 corners that this program, had, if it had served a purpose, had
19 outlived its usefulness, and that its abolition was taking a
20 step forward in enhancing the consumer protection standards in
21 California.

22 Once again, we would urge your Aye vote on his
23 confirmation.

24 SENATOR LEWIS: Thank you, Mr. Syphax. Next.

25 MR. RANDLETT: Jim Randlett, representing the
26 California Society of Plastic Surgeons.

27 We also are in support of the confirmation of
28 Dr. Joas. We had the opportunity to work with the Division of

1 Licensing, of which Dr. Joas is member, on the implementation of
2 two very important laws. One was SB 2036, by Senator
3 McCorquodale, which dealt with the advertising credentials of
4 physicals that were claiming to board certificated.

5 This was a very long, involved regulatory process
6 by the Board, plus the determination of an equivalency process
7 that took many hours of the Board's time.

8 We are here to tell you that on all occasions did
9 Dr. Joas and the other members of the Division look towards the
10 high quality standards and the protection of the patient in
11 implementing that law.

12 The second law that Dr. Joas and the Division
13 were responsible for was one that he mentioned, AB 595, that was
14 authored by Jackie Speier. This set up facility standards for
15 out-patient settings that are not otherwise licensed by the
16 state or certified by the Medicare program.

17 This is a major piece of patient protection to
18 make sure that when a patient goes to one of these facilities,
19 has general anesthesia or conscious sedation, that there are
20 minimum standards to assure that if an emergency does occur, the
21 patient will be protected.

22 In implementing that law and writing the
23 regulations and the accreditation process, Dr. Joas and the
24 Division, once again, went to the high quality standards to
25 protect the patient.

26 For these reasons, we would advocate his
27 confirmation. Thank you.

28 SENATOR LEWIS: Thank you very much.

1 Sir, are you in favor of confirmation?

2 MR. CUNY: Yes.

3 My name is Frank Cuny, and I'm the Director of
4 the consumer group called California Citizens for Health.

5 And I've had an opportunity to attend almost all
6 the Board meetings for four years. I've had an opportunity to
7 observe the Medical Board, Dr. Joas, and the committee's head.

8 Although we have some strong philosophical
9 differences, being supporters of alternative medicine, I think
10 he's highly qualified for the position, and a very fair,
11 reasonable person, and does his research very well.

12 We support his confirmation.

13 SENATOR LEWIS: Thank you very much.

14 Next.

15 MS. GIBSON: My name is Faith Gibson. I'm a
16 nationally certified professional midwife and a California
17 licensed midwife. And I represent the American College of
18 Domicilliary Midwives, which is an organization of both
19 physicians and professional midwives that provide
20 community-based services.

21 I also have been attending public meetings of the
22 Medical Board as a concerned citizen since May of 1993. So, for
23 the last five years, have had an opportunity to observe the
24 professional qualities of the various appointed members of the
25 Board, including Dr. Joas.

26 It's my opinion that Dr. Joas is well qualified
27 to continue in this important capacity, and that he will
28 continue to do an excellent job as a member of the Board.

1 It was my pleasure to work with Dr. Joas from
2 March of '94 to September of '96 as a citizen member of the
3 Medical Board's Midwifery Implementation Committee. We met
4 several times to work out the technical details for the newly
5 passed Licensed Midwifery Practice Act. I believe that that was
6 something of a difficult assignment for Dr. Joas, as he had no
7 particular background in the discipline of midwifery or any
8 natural sympathy for the plight of midwives. There was a lot of
9 opposition from the medical community, who were not particularly
10 pleased with the midwifery bill, a lot of pressure against it.

11 Dr. Joas resisted all of this negative pressure
12 and was willing to read large quantities of information about
13 midwifery to familiarize himself with the topic, and able to
14 press forward in spite of all of the controversy and the
15 complexity, and work towards the fair implementation of the
16 midwifery bill.

17 I believe that the professional abilities
18 displayed by Dr. Joas during the four years that he served on
19 the Board will continue to serve well the people of California.

20 I respectfully request that Dr. Joas appointment
21 as a member of the Medical Board be confirmed by the Senate.

22 Thank you.

23 SENATOR LEWIS: Thank you very much.

24 Next.

25 MS. MARCELINE: My name is Tosi Marceline. I'm a
26 licensed midwife here in California. I'm also representing the
27 California Association of Midwives.

28 We are supportive of Dr. Joas' reconfirmation as

1 an appointee of the Medical Board through many years of sitting
2 through the same committee hearings that Ms. Gibson spoke of.
3 We have noted how fair he is in difficult situations, how
4 willing he is to learn new information, and how delighted we
5 were that he could take on controversy and handle it to the fair
6 representation of all viewpoints.

7 So, thank you very much.

8 SENATOR LEWIS: Thank you.

9 Now let's hear from opposition or those wishing
10 to express concern.

11 DR. JOAS: Excuse me, may I interrupt? I have
12 statistics now for investigations. Is it appropriate for me
13 to --

14 SENATOR LEWIS: Please expedite it.

15 DR. JOAS: I'm just going to tell you that
16 through 1997, the days had been shortened to 55 days in the
17 Intake Unit, 23 days from Medical Consult and Review, 320 days
18 for investigation, and overall, 123 days.

19 SENATOR LEWIS: Very good, thank you.

20 Now let's hear from opposition or those wishing
21 to express concern.

22 DR. RIDER: I'm Dr. J. Alfred Rider, formerly
23 director of the PGY-1 Program at Davies Medical Center, which
24 was abandoned by the Medical Board last year, after being in
25 existence probably almost 20 years.

26 I'm also a former President of the Medical Board
27 of California. I was also instrumental in writing the laws that
28 related to foreign medical graduates.

1 And what Dr. Joas didn't point out, that there is
2 a law on the books right now, 2101, 2102, which allows for
3 foreign medical graduates to be trained in a joint JACH
4 accredited hospital.

5 The Medical Board adopted certain criterion: the
6 type of hospital; the type of medical program it should be.
7 Very strict program. And we followed that to the letter.

8 And later on, I'm going to introduce people to
9 you who've gone through the program, and show you that if it
10 weren't for the program, those people would not be practicing
11 medicine in the State of California.

12 So, I'm speaking on my behalf, and also on behalf
13 of many foreign medical graduates who which to oppose the
14 nomination of Dr. Thomas Joas to the Division of Licensing.

15 We feel he has demonstrated a cultural and racial
16 bias against foreign medical graduates. He was the driving
17 force and leader in the campaign to abolish the 1324 regulations
18 that allowed for foreign medical graduates to get a one-year
19 PGY-1 training program at medical centers such as Davies Medical
20 Center.

21 Dr. Joas has stated that when he got on the
22 Medical Board, his first priority was to abolish the 1324
23 Program, since he did not believe in a two-tiered system that
24 favored foreign medical graduates.

25 We have a basic difference in philosophy with Dr.
26 Joas. Many of the things that he pointed out that he takes
27 credit for, the Medical Board has done, he had very little to do
28 with. He's not on the Disciplinary Division, for example. And

1 many of the things he pointed out, the Medical Board did. But
2 the Discipline Division, they handle investigations; they handle
3 complaints, and so forth.

4 Although this state has a high minority immigrant
5 population, there are no specific programs to accommodate
6 foreign medical graduates who would serve their community.
7 Although there were only four programs such as the Davies
8 Medical Center approved in the state, approximately 90 graduates
9 went through these programs. These are 90 people who would not
10 have gotten the training necessary to get a license in State of
11 California, and although small, it's still significant. It
12 gives the foreign medical graduate an alternate way, and some
13 hope that he can find a training program, even though he's been
14 turned down by the large universities and large teaching
15 hospitals.

16 It's very simple. If you want a good training,
17 go to Harvard. Go on, go. Go to Stanford. It's a great
18 place. Go on. But you're not going to get in.

19 These foreign medical graduates don't get in.

20 One of our big teaching hospitals in San
21 Francisco, the Medical Director told me, "I will not accept any
22 foreign medical graduates. I only take Americans, period."

23 So, he said, go apply. So, I sent a girl to see
24 him. He said, "I'll interview as a favor to you." He said,
25 "I'm interviewing as a favor to Dr. Rider."

26 He interviews and says, "I'm going to start right
27 off by telling you, you have no chance to get in our program
28 because I will not take a foreign medical graduate, period. I

1 don't care what you've done, your qualifications, whatever.

2 Will not accept you."

3 Now, you can say what you want to say, that's the
4 way it is.

5 When Dr. Joas points out that the matching
6 program they have, and there's so many, a couple thousand. I
7 went through it myself in the United States the day after the
8 match. Didn't match. They're snapped up just like that. Most
9 of them are not in California; they're in other states. And
10 the ones that end up not being taken are things that are less
11 desirable for the physician, especially the foreign graduate.
12 For example, physical medicine, anesthesiology, psychiatry. You
13 don't get the programs in internal medicine, family practice,
14 that are available. They're all gone, and there's none there.

15 Every person I've had in my program has been
16 unable to get into an ACGME program.

17 I don't have the records of the other programs
18 that have been approved in the State of California, but I can
19 attest to the fact that since 1984, I've trained 12 medical
20 graduates. Two of these graduated from Argentina; two are from
21 Mexico; four from El Salvador; one from Czechoslovakia; one from
22 Hungary; one from Poland; and one from Russia.

23 They all hold licenses in the State of
24 California, and none have been subjected to disciplinary action,
25 and they all passed their exam on the first crack.

26 My program is better than any program in the
27 state. There's not another state program that can say 100
28 percent graduate, and 100 percent have not had any discipline.

1 So I'm saying, if it's done properly, it's a
2 very, very good program. And we've trained very excellent
3 people. You're going to meet some of them here this afternoon
4 and see what they're doing, and see if they aren't contributing
5 to this state.

6 Senator Hughes, you asked the question of Dr.
7 Joas, what was the intent of the 1324?

8 The intent was to allow the program for foreign
9 medical graduates who could not get into other programs. And
10 the hope was that they would go and serve in underserved areas,
11 at least serve in their communities where they're familiar with
12 their language and their culture. And by and large, that is
13 what has happened.

14 You can't force them, as Dr. Joas has said. You
15 can't force them. You cannot guarantee they'll all pass. But
16 in our program, they all passed.

17 Another thing. To get into the program we've
18 had, we've required them to pass the licensing examination, the
19 written exam. They've all passed that. And then they're only
20 left with having to have a year of postgraduate education in the
21 State of California, and take an oral exam. They've all passed
22 that.

23 Now, you mentioned something about pay. We do
24 not charge our students at all, zero. Several other programs in
the state have had a minimal charge for administrative fees,
26 because they consider them still students, I guess. But we do
27 not charge.

28 We have no financial interest. We do not gain

1 anything from teaching these people.

2 Some of these people are practicing in small
3 towns, less desirable areas. Some are practicing in the barrios
4 of San Francisco and serve a population it would be difficult
5 for American medical graduates to serve.

6 Six of my graduates have gone on to become
7 specialists in areas ranging from family practice, to
8 pediatrics, to internal medicine. In addition, there are
9 trained fellows from Greece, Japan, Brazil, Argentina, Mexico,
10 and India. With only a few exceptions, they have returned to
11 their homeland to practice medicine in local communities, and
12 thus benefit from the added expertise that the doctors have
13 gained.

14 By abolishing the 1324 Program, Dr. Joas and the
15 Medical Board of California has done a great disservice to the
16 foreign medical graduate and to the minority immigrant
17 community. The Board needs members who are more compassionate
18 to the plight of the foreign medical graduate.

19 I'd like to point out just a specific example.
20 Sometimes we learn by specific examples. It brings it home to
21 us.

22 The last person who applied for the 1324 Program
23 at the Davies Medical Center was Eugenia Garcia from Mexico.
24 Although her application was submitted in a timely manner, and
25 it was before Board's Special Program Committee on May 8th,
26 1997, Dr. Joas and the Licensing Division refused to act upon
27 her application because they knew they were going to vote to
28 abolish the 1324 Program the next day.

1 In spite of the fact, they scheduled public
2 hearings the next day. We came down and testified. We were led
3 to believe that this was an honest, open hearing, and they'd
4 already made up their mind. It was a complete exercise in
5 futility.

6 However, this action could not be put into effect
7 immediately because it would have to be approved by the Consumer
8 Affairs Division of Administrative Law. In other words, the
9 next day, they voted to abolish it, but it still had to be
10 approved by the Department of Consumer Affairs, Division of
11 Administrative Law. Thus, the 1324 regulation was in effect
12 when Eugenia Garcia's application was submitted and should have
13 been acted upon and not tabled.

14 I happen to be on the State Bar Examining
15 Committee. I've talked to some of my colleagues about this.
16 They said that is a, quote, "breach of mandatory duty."

17 In fact, the 1324 Program was not officially
18 abolished until November, 1997. Thus, if she had been allowed
19 to proceed, she probably would have been grandfathered in.
20 Therefore, her medical training has been held up for at least a
21 year because of these actions. This action by itself shows the
22 complete insensitivity of Dr. Joas and the Licensing Division to
23 the plight of foreign medical graduates.

24 I got a letter from the Board that said, just
25 because an application is submitted in a timely manner and is
26 complete, we have no obligation to approve it.

27 I would say, yes, but I think you have an
28 obligation to act upon it.

1 Suppose you change the law in this state that you
2 have to be 35 years old to drive a car, and you're going to vote
3 on that January 15th. And I have my application in on December
4 20th, and I'm 21 years old. I don't think legally you can table
5 my application on the grounds that you're going to change the
6 law three weeks or a month later.

7 Now, we mentioned -- he also mentioned the other
8 program, which is a 2112 program, which allows for a foreign
9 medical graduate to come to a place like the Davies Medical
10 Center to develop specialty training in their particular field
11 of interest so they can return home with the additional skills
12 to make them outstanding in their field.

13 SENATOR HUGHES: I'm sorry to interrupt you,
14 Doctor, but before we get to this other program, I want to go
15 back to what you were talking about, 1324 Program.

16 It seems to me as though I read about a large
17 number of patient complaints. Since you were so deeply involved
18 in this, why are there so many patient complaints in the 1324
19 Program?

20 DR. RIDER: My program, zero.

21 SENATOR HUGHES: You had none.

22 DR. RIDER: Zero; zero.

23 SENATOR HUGHES: What about the other complaints?

24 DR. RIDER: He mentioned three out of seven. I
25 don't know about our programs.

26 Let me just say approximately ten percent of the
27 physicians in the State of California have complaints lodged
28 against them every year; ten percent. And the longer in their

1 practice, the more likely they are to get some kind of
2 complaint.

3 So, and then, while you're talking about -- he
4 mentioned the pass rate. I'd like to point out, the pass rate
5 on the State Bar is about 55 percent. The Medical Board figure,
6 if they through my program, they pass 100 percent. Other
7 programs it's a certain percentage, and I can't remember, that
8 didn't pass. But he didn't say whether they passed the second
9 time around. Some people don't pass the first time. They have
10 to take it again. So, it's 16 percent fail.

11 SENATOR HUGHES: But you cannot practice law
12 until you pass the State Bar.

13 You shouldn't be practicing medicine until you
14 pass the Medical.

15 DR. RIDER: They're not practicing.

16 SENATOR HUGHES: You're making the analogy
17 between the State Bar passage and the Medical Board passage.

18 It doesn't matter how many times you take either
19 one of those exams, you shouldn't be out there actively
20 practicing either medicine or law without having passed a
21 qualifying exam.

22 Especially, medicine is a matter of life or
23 death. So, I don't see the analogy.

24 DR. RIDER: They're not practicing medicine until
25 they get their license.

26 SENATOR HUGHES: Okay.

27 DR. RIDER: They do not practice until they get
28 their license. That's illegal.

1 SENATOR HUGHES: I don't understand the analogy
2 that you made between law and medicine.

3 DR. RIDER: Anybody that knows anything about
4 mathematics, if you take three out of seven, you can't project
5 that to three hundred out of seven thousand. Anybody's been
6 involved in a political race knows you can't take the first
7 seven or eight votes and project that and say who's going to be
8 the winner or whatever.

9 I say, this is such a small amount, you can't
10 draw any conclusions from that at all.

11 We did a survey when I was on the Medical Board.
12 We said, maybe some schools have better graduates than others,
13 that are taught differently, that are less likely to have a
14 discipline. You'd be surprised. We got no difference in the
15 complaints from the Stanford graduate, the Harvard graduate, UC
16 graduate, or the Loma Linda graduate, or Creighton University
17 graduate. There was absolutely no difference between where they
18 graduated and to whether they had complaints or not.

19 SENATOR KNIGHT: Question.

20 Dr. Rider, you have a program to support 1324, I
21 assume? That's what you're talking about?

22 DR. RIDER: Do I have what?

23 SENATOR KNIGHT: You have a program that supports
24 the 1324 Program?

25 DR. RIDER: Yes. I had a program at Davies for
26 many years until the regulations --

27 SENATOR KNIGHT: First of all, where is Davies?

28 DR. RIDER: Davies is in San Francisco. It

1 serves the Castro District, the Haight District, the upper
2 Market District.

3 SENATOR KNIGHT: It's a school?

4 DR. RIDER: No. It's a private medical hospital.
5 It's a public community hospital.

6 SENATOR KNIGHT: You've indicated that 100
7 percent of your students, whatever they're called, that go
8 through the 1324 Program passed the exams and go on to practice
9 medicine?

10 DR. RIDER: That's correct.

11 SENATOR KNIGHT: It says here that a
12 substantially higher percentage of 1324 trainees failed the
13 written and oral license exams.

14 DR. RIDER: Not in my program.

15 SENATOR KNIGHT: Are there other programs besides
16 your program?

17 DR. RIDER: There's three others down south.

18 SENATOR KNIGHT: And their records are not nearly
19 as good as your records; is that correct? Do we have any
20 indication?

21 DR. RIDER: If the figures cited are correct,
22 that may be true. But I'm saying it's such a small number, it's
23 hard to really draw conclusions. You have to look at what kind
24 of person did he start with.

25 You've got to remember this, that the Medical
26 Board approves every one of these programs. They approved the
27 particular person who's going to go into that program.

28 SENATOR KNIGHT: Then I assume they approve the

1 programs that are failing students as well.

2 DR. RIDER: Every program was approved by the
3 Medical Board. They investigate it. They have site inspections
4 every couple years. I've had five in the last ten years, I
5 think.

6 SENATOR LEWIS: Doctor, how many have gone
7 through your program and are practicing medicine? How many have
8 graduated from your particular program.

9 DR. RIDER: From my program, we've had roughly
10 one a year since 1984. We don't train more than one person at a
11 time. It's a high, one-on-one program, designed to bring them
12 up to the American standards.

13 These people, by and large, not only have they
14 graduated from medical school in a foreign country, they are
15 licensed there, and they've practiced there for several years.
16 So, they're more mature, but they need to get up to tune with
17 the American program.

18 SENATOR LEWIS: Other than the success rates,
19 what differentiates your program from the others, which
20 apparently are dragging down the success numbers? What
21 differentiates your program?

22 You have a 100 percent success record. And yet,
23 apparently there's three other programs in Southern California
24 which are tilting in the other direction that are making the
25 comparisons somewhat unfavorable.

26 First of all, how large are those other programs?
27 You only graduate one a year in your program.

28 DR. RIDER: They probably train two or three a

1 year.

2 SENATOR LEWIS: Dr. Joas, with regard to this
3 whole controversy --

4 DR. JOAS: If I had a particular bias, and I
5 wanted to get rid of an opportunity for foreign medical
6 graduates, I personally would have not chosen something that
7 dealt with only seven individuals. I would have chosen
8 something larger, which brings me to 2111 programs and 2113
9 programs.

10 These are programs which are run by ACGME
11 programs. ACGME, the Accreditation Council for Graduate Medical
12 Education.

13 Places like UCLA, UC San Francisco, Stanford, you
14 name any of the large universities --

15 SENATOR LEWIS: What particular fault do you find
16 with Dr. Rider's program?

17 DR. JOAS: Particular fault?

18 SENATOR LEWIS: Yes.

19 DR. JOAS: The training is not at the level of
20 the training of at an ACGME approved program. It's -- the
21 mission of a community hospital is not teaching. It's to take
22 care of patients, as opposed to an ACGME approved program, like
23 UCSF, UCLA. The mission there is to teach students, and not to
24 have them and allow them to be reimbursed during their training
25 program.

26 SENATOR LEWIS: But in his particular program, he
27 has said that he had 14 students that have all passed; 100
28 percent of them have passed. There haven't been any complaints

1 lodged against the 14.

2 I mean, that sounds like a pretty good track
3 record.

4 DR. JOAS: It does on the face of it, but I would
5 beg to differ with his statistics.

6 I did not bring the specific statistics with me
7 as to the break-out of every single program.

8 But to have a continuation, in my opinion, to
9 have continuation of a specific program that, across the board,
10 does not meet the same standards as an ACGME program would be
11 not beneficial or protective of the consumers of this state.

12 I would also suggest that if this was such a
13 burdensome issue, that the other 1324 Program directors would be
14 here complaining as well.

15 I don't see them in the audience.

16 DR. RIDER: I think there's one other person
17 here.

18 SENATOR LEWIS: I was just going to say, with
19 regard to consumer satisfaction or whatever, I would think that
20 the fact that there's been a void of any complaints on these 14
21 physicians, I'm wondering if, in regard to the action that you
22 took, maybe you went too far. Maybe there would have been a
23 better way to craft it.

24 You could have cracked down on those programs
25 that were not doing a sufficient job, but perhaps this program's
26 doing a good job, and maybe you threw the baby out with the bath
27 water.

28 DR. JOAS: Again, this is not an unilateral

1 action on my part. This was an action involving every member of
2 the Division of Licensing.

3 Someone -- all of the individuals on the Division
4 of Licensing at the time that this program was under
5 consideration for abolishment visited one of the sites where
6 this program existed. So that they all had an opportunity to
7 view these programs in action.

8 And, all I did was co-author the report that
9 indicated our findings. And the Division then made a
10 judgemental call, and it was the whole Division, unanimously
11 accepting the report to abolish the program.

12 SENATOR LEWIS: Dr. Rider, on that point.

13 The Board voted seven to nothing to do this.

14 Are you going to be opposing the confirmation of
15 each of the seven when they come up in future confirmations.

16 DR. RIDER: I'm sorry, I didn't hear that.

17 SENATOR LEWIS: The Board, I believe, voted seven
18 to nothing to take this action.

19 Are you going to oppose --

20 DR. RIDER: Let me point this out.

21 They have a Special Programs Committee. And
22 there are, I think -- there were five people on the Special
23 Programs Committee. What they have recommended to the License
24 Division, they do it.

25 But Dr. Joas is a very forceful person. He and
26 Dr. Friedman were on the Board together, the Licensing Division,
27 the Special Programs. And Dr. Toke was the President of the
28 Licensing Division at that time.

1 Dr. Toke told me he was in favor of our program,
2 and he would see what he could do to see that we get approved.
3 So, when you have a subcommittee and they approve of something,
4 it goes to the main division. Then they usually go on the
5 subcommittee. And most of them don't know what's going on on
6 the main committee, anyway.

7 I'd like to read you something. This is from Dr.
8 Toke, President of Licensing, June 25th. "The decision to
9 repeal Section 1324 is based on the overall performance of all
10 of these programs and is not meant as a reflection on the
11 quality of your particular program."

12 That's what the President says, "not meant to
13 reflect on my program, but overall."

14 SENATOR KNIGHT: Question.

15 SENATOR LEWIS: Senator Knight.

16 SENATOR KNIGHT: Is there a cost associated with
17 the 1324 Program?

18 DR. RIDER: Is there a cost?

19 SENATOR KNIGHT: Who pays for it.

20 DR. RIDER: Our hospital, I've been able to
21 inveigle a very small stipend for them, even though they're
22 considered students, of \$600 a month. The student does not pay
23 anything.

24 SENATOR KNIGHT: Somebody pays for their
25 training? That's what I'm asking.

26 DR. RIDER: We donate our time.

27 SENATOR KNIGHT: That's it?

28 DR. RIDER: Yes.

1 SENATOR KNIGHT: What is the purpose of the
2 program? Why is it designated as a program within the Board's
3 structure?

4 DR. RIDER: It was originally begun when I was
5 still on the Medical Board the first time. It was the Board of
6 Medical Examiners, back in 1976. And it was recognized by the
7 Legislature and the Board that there was a need for special
8 programs of foreign medical graduates because there was a
9 shortage of programs for foreign medical graduates.

10 So, they set up 2101, 2102, to allow for this.
11 Then the Board, over years, adopted certain regulations to
12 comply with the law. The law says this, but you have to have
13 such-and-such regulations to accommodate it.

14 So, that was the background. And the idea was,
15 one, find a place for them; and two, of the hope that they were
16 to go into underserved areas and serve their minority
17 communities.

18 SENATOR KNIGHT: That's the next question. When
19 you say they were supposed to go, they are foreign students.
20 When you say go into the rural areas and to support their
21 people, is that back in their home country, or in this country?

22 DR. RIDER: Oh, no, no. That's in California.
23 People that only speak Spanish, you go to the Mission District
24 in San Francisco, and they're primarily Spanish speaking.

25 SENATOR KNIGHT: I just wanted to know whether
26 they were going to be here in California or go back in their
27 home country.

28 When they come to the 1324 Program, do they have

1 to stipulate that that's what they're going to do?

2 DR. RIDER: No.

3 SENATOR KNIGHT: Do some of them go back to their
4 home country?

5 DR. RIDER: We question them, what they want to
6 do, and we hope they'll do that. But by and large, if you are
7 from Russia --

8 SENATOR KNIGHT: Do some of them go back to their
9 home country?

10 DR. RIDER: No, they've all immigrated
11 here.

12 SENATOR KNIGHT: None of them have gone --

13 DR. RIDER: No, they're already immigrants.

14 SENATOR KNIGHT: None of them have gone back to
15 their home country.

16 DR. RIDER: Who knows? But, the other program
17 which I was going to go on to is the Fellow Ship Program.

18 SENATOR HUGHES: Excuse me, Senator. If I may
19 help you a little bit.

20 These are physicians in their own country
21 already, okay? They come here for an additional medical
22 experience.

23 SENATOR KNIGHT: They were medical students in
24 their own country.

25 SENATOR HUGHES: No, they were physicians in
26 their own native lands before they came here. So, they don't
27 have to go back to become physicians again. They can just go
28 back there and practice.

1 SENATOR KNIGHT: But they've gotten additional
2 medical training here. They've become specialists, or they've
3 gotten more expertise, or they've gotten updated on the latest
4 techniques.

5 SENATOR HUGHES: The reason they are coming here
6 is to practice here.

7 SENATOR KNIGHT: None of them have gone back to
8 their own countries.

9 DR. RIDER: There are two programs.

10 The 1324 allows the person to get licensed in the
11 State of California.

12 The 2112 is designed for a foreign medical
13 graduate who wants to come and work under a specific person to
14 learn something specific. For example, Dr. Bunkey at Davies is
15 the world's authority on micro surgery. He does the transplants
16 of limbs, you know, fingers, toes, all this kind of stuff.
17 People want to come see him. I have a certain expertise.
18 People want to come and work with me.

19 We had, for example, in May, we had Dr. Carlos
20 Gomez from Brazil who wanted to spend a year with me, get my
21 training, or help him train in gastroenterology, and he'd go
22 back to his country.

23 What Dr. Joas pointed out is that the Division,
24 in its wisdom, said that I hadn't documented that I was a
25 clearly outstanding specialist in the field.

26 This kind of hurts me, because I wrote that law
27 and put that word in there because I would think we'd make a
28 distinction between somebody that just had a board certified and

1 somebody who was outstanding.

2 So, in your packet here, I'd like to show you
3 what I presented. I think this, again, goes back to the almost
4 prejudice against the program, and then zeroing in on me. And
5 it really hurt me to say that I wasn't an outstanding specialist
6 in the field.

7 You have a bibliography of some 180 papers. I
8 have four degrees from the University of Chicago. I'm an
9 Associate Professor of Medicine at Davies Medical Center.

10 I was one of the first in the United States to
11 call attention to polyps to cancer of the colon. I was the
12 first to televise the stomach in black and white and in color on
13 television. We developed that technique. I developed the Rider
14 Motor Dilator for the esophagus. We developed an allergy test in
15 the gastrointestinal track.

16 Then, as this was going on, I remember calling
17 Dr. Joas. I said, "Guess what?" In November, if you look in
18 your packet, here's the magazine. It's called Practical
19 Gastroenterology. And I am featured as the sage of
20 gastroenterology.

21 And he said, "Well, that ought to put the
22 frosting on the cake. This ought to do it, because I don't see
23 how they can turn you down one now."

24 Meanwhile, one of the program managers said,
25 well, get some letters from your peers. I had eleven letter
26 from peers all over the United States certifying that I was a
27 truly outstanding specialist in the field.

28 Then I got a letter back saying, well, you hadn't

1 documented this, that. You need more evidence. You have to --.

2 SENATOR KNIGHT: Is he being confirmed?

3 SENATOR LEWIS: Doctor, we're getting a little
4 far afield here.

5 DR. RIDER: That's still to this program, to show
6 you how they just.

7 SENATOR LEWIS: Why don't you wrap up your --

8 DR. RIDER: Anyhow, I just wanted to show you
9 something. You have to be inter nationally recognized. Here's
10 a medal from the President of Argentina, the Order of De Mayo,
11 for teaching a foreign Argentine student. Now, that has to be a
12 little bit of international recognition.

13 So anyhow, the Board -- and Dr. Joas, again, is
14 one of the ring leaders, said I've not demonstrated that I am an
15 outstanding specialist. They don't say I'm not. They say I
16 haven't demonstrated.

17 I think I am. My peers think I am. And I think
18 they're wrong in having poor Carlos Gomez go back to Brazil
19 after spending two months here, waiting and waiting, and hoping
20 the Board would give him approval to spend a year in our
21 program.

22 SENATOR LEWIS: Thank you, Doctor.

23 Let's hear from the next witness now.

24 DR. PULETTI: My name is Ernesto Puletti. I am
25 an Assistant Clinical in Professional Medicine at the University
26 of California in San Francisco. I am Vice Chief of Staff at St.
27 Luke's Hospital in San Francisco, and I have been an examiner
28 for the Medical Board of California for the last 20 years,

1 approximately.

2 I was just going to reiterate the same thing,
3 that in our program, Davies Medical Center, who, incidentally,
4 is not only a hospital that is a community hospital. This has
5 affiliation with UC, with the University of California in San
6 Francisco for the orthopedic surgical program, and also for the
7 surgical, general surgery.

8 There was also a neurological -- neurosurgical
9 residents were training with us, but the program has been
10 interrupted because of there's not enough neurosurgeons to
11 continue the program.

12 Also, we have a very, very successful program
13 with Dr. Bunkey, who is an internationally known surgical
14 specialist, specializing in surgical implants on patients,
15 different patients.

16 So, the point I'm trying to make is, that
17 hospital is not only a community hospital, but a teaching
18 hospital also.

19 Also I'm going to raise the fact that we do not
20 get any money whatsoever from the trainees, and we don't have
21 any money from the state. It's not a state supported program.
22 It does not cost any money to the state, does not cost any money
23 to anybody that comes the train with us.

24 And also, I agree one hundred percent with
25 Dr. Joas in the sense that we cannot have incompetent people
26 pass the Board. And I can say that because I've been in the
27 Medical Board of California examining, and we have a very strict
28 protocol to pass physicians to obtain a California license. So,

1 this has always been our goal.

2 At the same time, our program, we know and
3 neither Rider nor myself, nor anybody that is connected with the
4 program will pass somebody -- lower the standards to pass
5 somebody. We have never, ever, under any circumstances promised
6 that they were going to be passing the State Board if they come
7 to the program. That's always been understood before anybody
8 even can come to the program.

9 Knowing Dr. Rider when I was Fellow of
10 Gastroenterology at the University of California for many -- for
11 two years, Dr. Rider would not accept anybody that does not
12 measure up to the highest standards.

13 I think that's about all I have to say.

14 SENATOR LEWIS: Thank you very much, gentlemen.
15 Could you free up those seats?

16 DR. RIDER: We have some other people.

17 SENATOR LEWIS: Yes, if you'll make way.

18 Next.

19 DR. BONILLA: I appreciate this opportunity. I am
20 Luis Bonilla.

21 I graduated from the University of El Salvador,
22 and thanks to the program that Dr. Rider had, I was able to
23 obtain my medical license.

24 I am practicing general medicine, and I am in two
25 hospitals in San Francisco, St. Luke's and Seaton Hospital.

26 And it was mentioned that in order to protect the
27 community, these programs should be abolished. And I consider
28 that this is a big mistake, because my community, the Hispanic,

1 they feel underserved because nobody of the physicians, you
2 know, I cannot generalize, but a lot of physicians, they don't
3 want to serve a community that doesn't have insurance, a
4 community that has Medi-Cal, because the Medi-Cal pay is low.

5 And there was another thing that was mentioned,
6 that we pay to be in the program. And that's completely false.
7 I was paid to be in the program.

8 And there was also mentioned about what is the
9 characteristic of the program. The program is made by the
10 characteristic of the director. And I consider that Dr. Rider
11 is very demanding, capable, and intelligent. And let me tell
12 you, it has been my best mentor.

13 And that's why, when I obtained my medical
14 license in 1988, I went to private practice because I felt
15 confident. And anybody can keep track of my record, you know.
16 They can do it easily.

17 So, that's the only that I have to say.

18 SENATOR LEWIS: Thank you very much.

19 Next.

20 DR. RIDER: Can we have a few more from my
21 program first? I'd like to have those who finished my program,
22 then he can present his program. They're just very quick. Just
23 identify who they are.

24 SENATOR LEWIS: All right, why don't you do that;
25 just identify yourself. If you have something else that hasn't
26 be said already, please say it briefly.

27 DR. BRADLEY: Yes. I'm Scott Bradley I practice
28 in a rural area in central California, where I prominently have

1 an Hispanic population. I'm bilingual.

2 One thing that wasn't clear, and I won't go over
3 the points that were elaborated on, but one thing that wasn't
4 clear is that to go through this program, you have to have
5 license to practice from the country you came from.

6 I'm obviously from the United States. I grew up
7 In Marin County. But I graduated from the University of Talama,
8 Guadalajara. I completed the requirements for internship at
9 University of Talama Nacional in Mexico City, and I completed a
10 one year of social service in Mexico City, the requirements for
11 that.

12 After completing that, I still had to wait to get
13 my license, pass the Mexican Medical Boards, and have an actual
14 license to practice.

15 So, these are not medical school graduates who
16 enter this program. These are physicians who have a license to
17 practice from the country they came from. I'm sure in the past;
18 there were varying standards, but the standards now in most of
19 Latin America are very, very high.

20 And I feel that this isn't a two-tiered system at
21 all. Rather, the bar was probably raised. And I did a little
22 bit more; I was required more of me than the usual programs.

23 SENATOR LEWIS: Thank you.

24 Next.

25 SENATOR KNIGHT: Before they get here,
26 Mr. Chairman, can I ask a dumb question?

27 What defines this 1324 Program?

28 DR. JOAS: In the California Code of Regulations,

1 the 1324 Program had specific requirements. The hospital had to
2 have Joint Commission approval. It was in a community hospital.
3 The medical director of the program had to have some degree of
4 capability of directing the program.

5 It was meant, in my interpretation of it, was
6 meant as a remedial program for international medical graduates
7 to spruce up their capabilities in the State of California so
8 that they could then take whatever licensing exams were
9 necessary to be licensed in the State of California.

10 SENATOR KNIGHT: Then the question is, what
11 precludes them from doing that same thing without Section 1324?

12 DR. JOAS: Nothing.

13 SENATOR KNIGHT: Thank you.

14 DR. RIDER: To answer, they can't get in any
15 other program.

16 SENATOR KNIGHT: I thought you said they
17 immigrated. I thought they had already immigrated to this
18 country.

19 DR. RIDER: They're here, but they got to get a
20 one-year program in the State of California.

21 SENATOR LEWIS: Next, please.

22 DR. TRAPALEIS: I'm Andrew Trapaleis.

23 I'd like to support Dr. Rider's program. I'm one
24 also of the -- I don't know how I should say -- a foreign
25 graduate. I was an American who started in a foreign
26 university, who came back to get the licensure, and I was unable
27 to.

28 If it wasn't for Dr. Rider's program, which I did

1 a fellowship in gastroenterology, then went on to do an
2 internship over at St. Mary's Hospital in San Francisco, I would
3 not have been able to practice medicine here in California.

4 Presently, I have an office in Jackson, an
5 underserved nation -- town, I should say -- and I guess that
6 maybe 80 percent of my practice is Medi-Cal, mainly because all
7 the physicians are Latin or do not want to see the Medi-Cal, as
8 another physician mentioned here a little earlier, because of
9 the low pay.

10 And if you like, now, I think there is a
11 confusion as far as this physicians going back to their nations
12 because they got trained here. That has nothing to do with it.
13 I think we're confusing foreign graduates versus foreigners,
14 period.

15 This is American students that went to a foreign
16 country and came back. It's one bill, and the other bill is
17 the foreign doctors who came here, who immigrated here, and will
18 stay here. Most of them, and the majority in Dr. Rider's
19 program ended up going to family practice or general medicine,
20 and who have gone to small towns, as mine up in Jackson.

21 We have another two doctors here. One's up in
22 once Placerville, where again, about 75 percent of the patients
23 are Medi-Cal.

24 SENATOR LEWIS: Thank you.

25 We're going to devote five more minutes to
26 opposition, and that'll be it.

27 DR. RIDER: One lady here. We haven't had a lady
28 yet.

1 DR. SOMMA: I'm Dr. Somma, Elena, from
2 Argentina. Graduated from the University of Buenos Aires, and
3 practices medicine in Argentina for many years, and then come up
4 here.

5 And thanks to the program, I will be able to
6 fulfill the licensing here. I completed all the examinations,
7 and after I have been done with this, Dr. Rider was able to
8 admit me. And thanks to him, I am what I am.

9 And I can tell you, he is not mild. I almost
10 cried with him, so I be able to be a physician here thanks to
11 him.

12 DR. RIDER: That's our case.

13 SENATOR LEWIS: Sir.

14 DR. RIDER: He's from Southern California.

15 DR. ZARRINPAR: Only briefly, I want to defend
16 from foreign graduate.

17 My name is David, and my last name is Zarrinpar.
18 I am graduated from Persia. I'm an American citizen here. So,
19 I am an American citizen, sir.

20 And regarding that, the numbers that they are
21 telling that there is more consumer numbers, that they are
22 differences, because we, as primary care, we are taking care of
23 some people, a lot of the number.

24 It reminds me, my teacher told me, how many times
25 you have perforated your uterus when you do the curettage. I
26 said nothing. He said, so, You have nothing to do. You had not
27 enough number.

28 So, regarding that, as we see more patients, we

1 have more complications. So regarding that, maybe number is
2 right, but regarding the service we are giving to the people.

3 Another thing that I want to tell, that we are
4 passing all the boards, and that we are qualified to be accepted
5 to accredited programs. I heard Dr. Joas say there is 200 open
6 programs. Even right now, there isn't a situation for me, even
7 after three years licensed doctor, even I am very -- with
8 pleasure to go taking that program if they offer me to go, to be
9 working at that program.

10 So, I believe that the solution for that, it is
11 the raising the conditions of this hospital that teach the
12 people as level as they wanted. It is not the closing that
13 place. I believe that it is not very good decision to close
14 this situation.

15 SENATOR LEWIS: Thank you very much.

16 That concludes the testimony.

17 SENATOR KNIGHT: Move it.

18 SENATOR LEWIS: Senator Knight moves
19 confirmation. Please call the roll.

20 SECRETARY WEBB: Senator Ayala.

21 SENATOR AYALA: Aye.

22 SECRETARY WEBB: Ayala Aye.

23 SECRETARY WEBB: Senator Hughes.

24 SENATOR HUGHES: Aye.

25 SECRETARY WEBB: Hughes Aye. Senator Knight.

26 SENATOR KNIGHT: Aye.

27 SECRETARY WEBB: Knight Aye. Senator Lewis.

28 SENATOR LEWIS: Aye.

1 SECRETARY WEBB: Lewis Aye. Four to zero.

2 SENATOR LEWIS: Congratulations.

3 DR. JOAS: Thank you.

4 [Thereupon this portion of the
5 Senate Rules Committee hearing was
6 terminated at approximately 4:15 P.M.]

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I, EVELYN J. MIZAK, a Shorthand Reporter of the State of California, do hereby certify:

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SENATOR JOHN BURTON, Chair

SENATOR JOHN LEWIS, Vice Chair

SENATOR RUBEN AYALA

SENATOR TERESA HUGHES

SENATOR WILLIAM KNIGHT

STAFF PRESENT

GREG SCHMIDT, Executive Officer

PAT WEBB, Committee Secretary

NANCY MICHEL, Consultant on Governor's Appointments

WADE TEASDALE, Consultant to SENATOR LEWIS

FELICE TANENBAUM, Consultant to SENATOR HUGHES

JOSH LOWERY, Consultant to SENATOR KNIGHT

ALSO PRESENT

CLIFFORD L. ALLENBY, Director
Department of Developmental Services

RICK ROLLENS
Association of Regional Center Agencies

DWIGHT HANSEN
California Rehabilitation Association

JOSE H. MILLAN, Chief
Division of Labor Standards Enforcement

SENATOR JIM COSTA

DAN CURTIN
California State Council of Carpenters

CHUCK CENTER
California State Council of Laborers

DAVID LANHAM
Southern California Labor Management
Operating Engineers Contract Compliance

1 JAMES SANZARO
2 SEIU Paramutuel Clerks

3 EDWARD TCHAKALIAN
4 United Garment Workers Union

5 BOB REED, Sewing Contractor
6 Stitches, Incorporated
7 Garment Contractors Association of Southern California
8 ACAC, Apparel Contractors Alliance in California
9 American-Chinese Garment Contractors Association
10 Korean Garment Industry Association
11 Northern California Chinese Garment Contractors Association

12 TIM CREMINS
13 Operating Engineers

14 CHARLES F. RAYSBROOK, Director
15 Department of Boating and Waterways

16 SCOTT DAVEY
17 Los Angeles County Lifeguard Association

18 RAYMOND REMY, Director
19 Department of Employment Development
20
21
22
23
24
25
26
27
28

INDEXPage

Proceedings 1

Governor's Appointees:

CLIFFORD L. ALLENBY, Director
Department of Developmental Services 1

Opening Statement 1

Questions by CHAIRMAN BURTON re:

Moving People from Regional Centers
into Communities 1

Increased Funding in Budget for
Regional Center Operations 3

Level of Compensation for Day Care
Providers 4

Questions by SENATOR HUGHES re:

Opinion of Critical Report by HCFA 5

Hopeful for Renewal of Federal Waiver 6

How Department Proposes to Tie Together
Training and Increased Wages 7

Trend in Community Placements vs.
Developmental Centers 8

Possibility of Closing Any of State's
Five Developmental Centers 8

Motion to Confirm 9

Witnesses in Support:

RICK ROLLENS
Association of Regional Center Agencies 9

DWIGHT HANSEN
California Rehabilitation Association 10

Committee Action 11

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

JOSE H. MILLAN, Chief
Division of Labor Standards Enforcement 11

Introduction and Support by
SENATOR JIM COSTA 11

Background and Experience 13

Questions by CHAIRMAN BURTON re:

Denial of Licenses to Certain
Garment Contractors Due to
Noncompliance with Back Payroll
Tax Filings and Payments 15

Criticism that Division Is Slow
to Act, Misses Statutory Deadlines,
Lax in Enforcement 16

Questions by SENATOR HUGHES re:

Would Budget Augmentation Help
Improve Enforcement and Effectiveness 17

Criticism by Legislative Analyst that
Penalties Were Never Collected 17

Forceful Advocacy for Staffing
Needs of Division 18

Case of James Sanzaro, Where Enforcement
and Collection Powers Were Not
Utilized 18

Position on Retention of Existing
Method for Determining Prevailing Wages 20

Actions Proposed to Enforce Existing
Prevailing Wages in Public Works Projects 20

Ruling Relating to Employer
Discrimination on Sexual Orientation 21

Motion to Confirm 22

Witnesses in Support:

DANNY CURTIN
California State Council of Carpenters 22

CHUCK CENTER
California State Council of Laborers 22

1	JAMES SANZARO	
2	SEIU Parimutuel Clerks	23
3	ED TCHAKALIAN	
4	United Garment Workers Union	23
5	BOB REED, Sewing Contractor	
6	Stitches, Incorporated, Los Angeles	
7	Various Garment Contractor Associations	23
8	JIM CREMINS	
9	Operating Engineers	24
10	Committee Action	25
11	CHARLES F. RAYSBROOK, Director	
12	Department of Boating and Waterways	25
13	Background and Experience	25
14	Questions by CHAIRMAN BURTON re:	
15	Intentions regarding MTBE	27
16	Authority to Prohibit Two-stroke	
17	Engines on Waterways	29
18	Lack of Regulatory Authority	30
19	Position on DEBRA BOWEN Bill	30
20	Motion to Confirm	30
21	<u>Witness in Support:</u>	
22	SCOTT DAVEY	
23	Los Angeles County Lifeguard Association	31
24	Committee Action	32
25	RAYMOND REMY, Director	
26	Department of Employment Development	32
27	Background and Experience	32
28	Questions by CHAIRMAN BURTON re:	
	Project 2000	33
	Motion to Confirm	35

Questions by SENATOR HUGHES re:

Role of EDD in Implementation of Welfare Reform in California	35
Adequacy of Maximum Weekly SDI Benefit	36
Screening of SDI Applicants for Citizenship	36
Informing Claimants of New Telephone Filing for UI and SDI Benefits	37
Availability of Staff to Help Those Needing Assistance	38

Questions by SENATOR AYALA re:

Reimbursement of Benefits Paid by Undocumented Workers	39
Reporting of Undocumented Workers to INS	41
Penalties against Employers Hiring Undocumented Workers	42

Questions by CHAIRMAN BURTON re:

Department's Support for Bill Increasing Disability Insurance	43
Possibility of Reducing Rate Due to Surplus in Fund	44

Committee Action

Termination of Proceedings	46
Certificate of Reporter	47

P-R-O-C-E-E-D-I-N-G-S

--ooOoo--

CHAIRMAN BURTON: Cliff Allenby, good afternoon, sir.

MR. ALLENBY: Good morning, good afternoon.

CHAIRMAN BURTON: Director of Developmental Services.

MR. ALLENBY: Yes.

Mr. Chair and Members, Cliff Allenby, appointee for the Department of Developmental Services.

Do you want an opening statement?

CHAIRMAN BURTON: Whatever you want to do. You're kind of new here.

MR. ALLENBY: I was appointed at the end of November as the Department Director. And obviously, my plans are to stay through the current administration, and then go out and look for work beginning in January of '99.

CHAIRMAN BURTON: How do you view the concern people have about moving people from the centers into the community? How do you balance what is a tough situation to get people back in the community, but, on the other hand, make the ones that can't function in the community, that we don't get into with the DDs what we did with the mentally ill in the '70s?

MR. ALLENBY: One of my goals is to try to have the folks that are part of the system really think of it as a system, not developmental centers with their own constituency group, and then the regional centers with their own constituency group.

1 What I believe we should have is, we should have
2 a swinging door, but the door should go both ways.

3 We had a court settlement, the so-called Coffelt
4 decision, and the net effect of that was to severely reduce the
5 number of intakes to the developmental center system, because
6 the system had fairly close to the same number of people leaving
7 the DCs into the community.

8 But what has happened as a result of the Coffelt
9 is that there have been just an absolute almost drying up of
10 people going back into the system.

11 I think that the system, the developmental center
12 system, has some real attributes. My view is that it should be
13 used more frequently for our clients in the community who have
14 difficulties and may need to go back into the developmental
15 system, developmental center system, for some period of time for
16 stabilization. Then, if they prove that they can go back out
17 into the community, because the intent of the system is to do
18 the least restrictive environment, that clearly is in the
19 regional center system.

20 But my hope is that we can improve and engender
21 some trust among the various parties. That's easier said
22 than done because there's a long history.

23 CHAIRMAN BURTON: You've got a tough road, as you
24 know. I've known Denny Amundson for many years, when he was
25 with Uncle Frank Lanterman. I can't tell you how much I got
26 beat up saying nice thing about Denny. Not defending him, just
27 saying nice things.

28 One of the concerns was that, again, maybe it was

1 a cost saving thing, or because I go back to what happened with
2 the mentally ill in the '70s, is that there was a timeframe
3 under Coffelt. They were, like, way ahead of the curve. I
4 think that that was a concern.

5 One of the concerns that happens is when, in
6 theory, at least in the press, is that a lot of these people get
7 back in the community, and the Department had no idea where they
8 were. In other words, to be able to follow up and know where
9 they are, and kind of have more of a control mechanism.

10 I think you know what all the problems, some
11 real, some imaginative, imagined, but when we're dealing with
12 parents, or loved ones, or even friends of people with
13 disabilities, what may not be real, but if it's real in their
14 mind, it's a real problem, I think, for those of us who
15 represent them in office, and then for you.

16 Now, we've increased funding. The budget's got
17 increased funding for the regional center operations. What role
18 can you play or will you play to see that some of this money
19 gets passed? That money that's meant to bring some of the
20 employees up to a level where they should be?

21 MR. ALLENBY: We have -- the budget in January
22 proposed a number of improvements to the regional center system
23 to improve case management, also to give -- reflect the fact
24 that the salaries of the personnel at the regional centers have
25 not kept up with other changes occurring.

26 In the May revision, we proposed a number of cost
27 of living adjustments for the actual providers. And there's
28 language to ensure that at least a part of that go directly to

1 salaries. Some of it's tried to training. If you go, have a
2 certain amount of training, then there'll be an automatic ten
3 percent boost to your salary. And then occur in the following
4 year, you can get another ten percent boost.

5 I think that part of the problem, and it was
6 Denny's problem, and it was very difficult, was that during the
7 time when we had the budget crunch, there were a number of
8 reductions to the budget in both regional centers and the
9 developmental centers. And there was a lot of stress and strain
10 as a result of that.

11 And what we're doing now is getting some of that
12 loss back. And I think the system will be better served because
13 of that.

14 CHAIRMAN BURTON: Just one. I'm trying to
15 remember, the daycare providers came in to see me. They were
16 concerned about the level of compensation, and they had a level
17 that was way up.

18 Do you have any plans to do something there?

19 MR. ALLENBY: We have a proposal in the budget.
20 What we're statutorily required to do is to publish each year
21 the gap between what we're paying them and their cost. And
22 there is sufficient money to fund the gap.

23 There's another area where we have day programs
24 that have been in existence for a long time that are really
25 being substantially getting much lower reimbursement than other
26 day programs providing for like programs. So, we're adding
27 funds to bring them up to the lower limit. There are about 150
28 day programs that will receive an additional increase beyond the

1 amount to fund the gap.

2 We're also asking that the system be -- that we
3 relook at the total system, because clearly it has not worked.
4 We've had the substantial spread from high to low. We believe
5 that we need to bring them together, and we also believe we need
6 to have performance and outcome measures really be the
7 determiner of what the program worth is.

8 CHAIRMAN BURTON: Members of the Committee?
9 Senator Hughes, do you have something?

10 SENATOR HUGHES: Yes.

11 Thank you very much for appearing before us
12 today.

13 I understand that HCFA had a preliminary report
14 that was really critical of your Department. They included such
15 findings as the fact that you had unsafe conditions in some
16 community care facilities, and there was a denial of human
17 dignity and the opportunity to participate in community
18 activities. And there were serious deficiencies in the state's
19 community care licensing process, and inadequate access to
20 certain services, such as appropriate dental and behavioral
21 health services. And severe concerns about the lack of
22 financial and programmatic oversight by the Department of Health
23 Services, especially of the DDS and the regional centers.

24 Is that still the situation? What should we
25 think of that report?

26 MR. ALLENBY: Well, Senator Hughes, we had two
27 ways of dealing with the HCFA report. One was to argue that a
28 sample size of 91 to make the kinds of conclusions they did,

1 when we had almost 40,000 folks, was maybe problematic.

2 But on the other hand, while we didn't agree with
3 all the findings, we did agree that there were significant
4 problems in the system. And that we have been working with HCFA
5 since the report came out.

6 They are just completing a survey this month, a
7 re-survey of what's occurred since we started this whole
8 process.

9 We believe that the problems that were out there,
10 and there were problems, are being resolved. And we do believe
11 that we'll have a better system as a result of the HCFA report.

12 The proof of the pudding will be whether we get a
13 renewal of our waiver. The current waiver ends the end of June
14 of this year. We are, as of this moment, hopeful that we will.

15 SENATOR HUGHES: You're what at this moment?

16 MR. ALLENBY: Hopeful that we will get a renewal
17 of the waiver.

18 The problem we have is that a number of things
19 and improvements that we are calling for are included in our
20 proposed budget. Now, under the Constitution, the budget's
21 supposed to be finished by the end of June. And if it is, then
22 I think we will be fine, because as of now, the subcommittees
23 that have reviewed our budget have approved 95 percent of our
24 proposals, or maybe even a little bit more.

25 We're not sure what'll happen if the budget is in
26 kind of a hiatus of July-August. Hopefully, we can convince the
27 federal government that even though the budget is not signed,
28 that the administration supports all of the changes that we're

1 proposing.

2 So, as of now, we're hopeful that we'll get a
3 five-year waiver renewal.

4 SENATOR HUGHES: I'd like for you to give us a
5 little insight.

6 How does your Department propose to tie together
7 the training and the increased wages?

8 MR. ALLENBY: All right.

9 We have a proposal in our community care
10 facilities where we will put together a training program that
11 will be given to the workers. The workers complete the training
12 program, which is approximately 35-37 hours. They will receive
13 a ten percent increase in their salary.

14 In year two, we're offering another 35 to 37 hour
15 training program. If they complete the training program, they
16 will receive a ten percent -- an additional ten percent increase
17 in their salaries.

18 What we're trying to do, and what it looks now
19 like we will be able to do, we'll be able to use the ROP
20 community college system that will basically be the ones that
21 are providing the training, which does mean that they'll be able
22 to get credit for the training, which is very important to a
23 number of our provider -- a large portion of our provider
24 community.

25 So, we feel that we have a program that will
26 begin to give some recognition to the fact that these folks have
27 very difficult clients to deal with and should be properly
28 compensated for providing very needed services.

1 SENATOR HUGHES: So then, do you see the trend
2 the community placements over placements in the developmental
3 centers continuing?

4 MR. ALLENBY: It has been the case for a number
5 of years, beyond just the Coffelt years. We've had substantial
6 transfers from within the developmental centers out to the
7 community.

8 What has not happened over the past four or five
9 years is that there's not been any inflow into the developmental
10 center system. As I said earlier, I believe the door should go
11 both ways. If there are clients in the community that need a
12 very strong medical model, which is what the developmental
13 centers are, then they should be able to go to those centers.
14 And the regional centers really should have a good working
15 relationship with the various developmental centers.

16 There will continue to be movement out, but I
17 think at some point in time, we'll have to look, in areas where
18 it's truly needed, there's some movement in.

19 SENATOR HUGHES: Do you think that if this kind
20 of trend continues, do you see the foreclosure of any of the
21 state's five developmental centers any time in the near future?

22 MR. ALLENBY: No, I don't. I think, I mean, if
23 you look at budget for this year in our May revision, we
24 actually asked for an augmentation because the number of clients
25 in the DC that we estimated in January, if the amount we're
26 assuming for '98-'99 is actually higher.

27 I don't see closures. What I do see at some
28 point in time is that the Legislature and the administration are

1 going to have to look to how we really do provide a medical
2 model. We're now looking at the condition of our developmental
3 centers, and what it would take to bring them up to current
4 codes. And it does represent a lot of money, a lot of money.

5 So, we're going to have to look at whether we
6 keep the regional centers in the way they are, or whether we
7 basically establish maybe smaller, more geographically
8 distributed, or just what.

9 Since I'm not going to be here to make that
10 decision, I can't tell you what will really happen. But I think
11 that that really is going to be a policy issue that you folks
12 are going to have to be dealing with over the next year or two,
13 to figure out whether you really should put the money into the
14 current system or reform it.

15 We're going to be spending a lot of time trying
16 to give you the kind of information you'll need to make a good
17 decision in terms of what to do next.

18 SENATOR HUGHES: Thank you.

19 CHAIRMAN BURTON: Any further questions, Members
20 of the Committee?

21 SENATOR LEWIS: Move confirmation.

22 CHAIRMAN BURTON: Moved by Senator Lewis. Call
23 the roll.

24 Anybody opposed? Those in support, give a little
25 nod.

26 MR. ROLLENS: Rick Rollens, representing the
27 Association of Regional Center Agencies serving the needs of the
28 146,000 people in California with developmental disabilities.

1 We're here in strong support of Cliff Allenby for
2 Director of this Department. Hard working, conscientious, and
3 bringing a real breath of fresh air to that department.

4 We strongly support his confirmation.

5 CHAIRMAN BURTON: Other support?

6 MR. HANSEN: Mr. President, Members, Dwight
7 Hansen, representing the California Rehabilitation Association.
8 We represent 110 private community-based nonprofits that do the
9 day programs that Senator Burton referred to earlier.

10 We strongly support Cliff Allenby's confirmation
11 today. He is, in fact, qualified beyond measure to serve in
12 this position.

13 That doesn't mean, however, that we're totally
14 satisfied with the May revision. In fact, the funding that the
15 administration has put forward for day programs is held up,
16 potentially, for as much as a year or a year-and-a-half. The
17 issue that that raises for Cliff, of course, is that he may not
18 have the resources necessary to administer this important
19 Department in the way that he's capable of.

20 Notwithstanding our concerns about May revise, we
21 absolutely applaud Cliff's appointment and recommend his
22 confirmation.

23 CHAIRMAN BURTON: Any opposition?

24 Call the roll.

25 SECRETARY WEBB: Senator Ayala.

26 SENATOR AYALA: Aye.

27 SECRETARY WEBB: Ayala Aye.

28 SECRETARY WEBB: Senator Hughes.

1 SENATOR HUGHES: Aye.

2 SECRETARY WEBB: Hughes Aye. Senator Knight.

3 SENATOR KNIGHT: Aye.

4 SECRETARY WEBB: Knight Aye. Senator Lewis.

5 SENATOR LEWIS: Aye.

6 SECRETARY WEBB: Lewis Aye. Senator Burton.

7 CHAIRMAN BURTON: Aye.

8 SECRETARY WEBB: Burton Aye. Five to zero.

9 CHAIRMAN BURTON: Congratulations, Cliff.

10 MR. ALLENBY: Thank you.

11 [Thereupon the Committee acted
12 upon legislative agenda items.]

13 CHAIRMAN BURTON: Jose Millan, Chief, Division of
14 Labor Standards Enforcement.

15 SENATOR COSTA: Thank you very much,
16 Mr. Chairman, Members of the Committee.

17 I'm here to introduce and support the
18 confirmation for Jose Millan as California's new Chief, Division
19 of Labor Standards Enforcement.

20 I first met Mr. Millan over six years ago in a
21 program that dealt with targeted industries, partnership
22 program, primarily focusing at a lot of the garment workers in
23 Southern California and farmworkers in various parts of the
24 state, to try to target those specific industries to improve
25 their ability to enforce labor standards.

26 And as you might expect, that entire program was
27 somewhat controversial. But throughout that effort, I think,
28 the industries that were targeted after the program did a better

1 job, frankly, in maintaining and enforcing labor standards for
2 those workers. And we were able, I think, as a result of that
3 to clean up some of the bad actors who, in fact, were not doing
4 so.

5 In that entire effort, and we weren't always in
6 agreement, Mr. Millan and myself, I will tell the Members of
7 this Senate Rules Committee that I found his ability to work
8 with diverse interests to be remarkable. And while we did not
9 always agree, he was the type of individual that was hands-on in
10 his approach. He would come to the meetings. He'd get out into
11 the fields.

12 His bilingual capabilities, I think, made him
13 very well informed, and more importantly, able to communicate to
14 the various employees what standards and what protections under
15 the law they had available to them. He understands the
16 vulnerability, I think, of workers in many of our industries.
17 He's always attempted to be fair, impartial, in the enforcement
18 of labor laws in California, an effort that he has dedicated 13
19 years of his life to.

20 I think his technical knowledge of labor issues
21 as Labor Commissioner intends to inspire confidence in those who
22 work with him and those with employers and employees alike.

23 I have no hesitation whatsoever in recommending
24 him to serve as the Labor Commissioner, and would ask for the
25 support of the Senate Rules Committee.

26 CHAIRMAN BURTON: Thank you, Senator Costa.

27 MR. MILLAN: Thank you, Senator Costa, very
28 much.

1 Mr. Chairman and Members of the Senate Rules
2 Committee, my name is Jose Millan, and I come before you today
3 as the designate for the position of State Labor Commissioner
4 and Chief of the Division of Labor Standards Enforcement.

5 Inasmuch as I think you can get a better idea of
6 a person by understanding where they came from, let me begin by
7 telling you a little bit about my background.

8 I was born and raised in a loving but poor home
9 in East Los Angeles. Since both my parents worked in order to
10 support me and my six brothers and sisters, I was left pretty
11 much on my own to complete homework assignments and the like.
12 But these experiences taught me to become self-reliant as well
13 as responsible.

14 I became the first member of my family to attend
15 college, Claremont College, and for that I'm very proud, because
16 I've always felt that a college education is like a key that
17 would open doors that would otherwise be closed to me.

18 Wishing to continue my education, but wanting to
19 experience life outside of California, I went to graduate school
20 in Vermont and law school in Texas. And I learned from these
21 experiences that there's no place like home, in my case that's
22 California.

23 After completing my education, I began my career
24 in the field of labor law enforcement with the Agricultural
25 Labor Relations Board. There I gained a reputation with both
26 the unions and management as being tough but fair, and putting
27 enforcement of the law above everything else.

28 I think that every Labor Commissioner comes to

1 the job with a pre-set idea of what could be done. In that, I'm
2 no different. I have many goals, including strengthening and
3 expanding our work site inspection and field enforcement
4 programs by promoting our partnership programs with other
5 agencies, individuals, and organizations so that minimum labor
6 standards in the workplace can be vigorously and fairly
7 enforced.

8 I'd like to stabilize and further improve the
9 efficiency of our wage claim adjudication program, modernize our
10 licensing program so that it becomes a true indicator of
11 competent and responsible employers.

12 I'd like to embark on the most ambitious
13 educational outreach effort in the Division's history,
14 particularly by reaching out to those communities that have been
15 overlooked, or ignored, or have been linguistically isolated.

16 I intend to reach out to both employers and
17 employees, because I believe that promoting compliance with the
18 laws and reaching out to these communities is of paramount
19 importance. Prevention is the most effective, cost effective,
20 form of enforcement.

21 And in closing, I just want to say that while I
22 realize that the challenges ahead are daunting, I do have faith
23 in my abilities and my 13 years with the Agency enforcing these
24 laws. I do have faith in God, and with the help of the people I
25 work with, I'm confident I will do a job that all Californians
26 can be proud of.

27 I'd be glad to answer any of the questions you
28 may have.

1 CHAIRMAN BURTON: There is one question that
2 Senator Polanco expressed a concern, where recently you were
3 going to deny licenses to some garment contractors because they
4 were failing to keep up to date their unemployment insurance
5 reporting.

6 Do you ever any idea what I'm talking about?

7 MR. MILLAN: Yes, sir.

8 One of the methods by which we determine, as I
9 said, one of the things that I want to do is strengthen our
10 licensing program so that it becomes a true indicator of
11 competent, responsible employers.

12 One of the ways that we do that is, we screen
13 applicants for both garment registration, as well as farm labor
14 contractor licenses, as well as the talent agent licenses for
15 compliance with back payroll taxes, because we feel that there's
16 a nexus there between your history of paying your payroll taxes
17 and your competency as an employer.

18 So, we do have about 200 garment manufacturers
19 who have applied for a license with us that have completely
20 ignored prior back tax assessments for payroll taxes. And we
21 did not feel that that was a good indicator of their competence
22 to carry on a business.

23 But we are working with the garment contractor
24 associations in order to reach these people one more time and
25 get them into compliance with these laws.

26 CHAIRMAN BURTON: So, in effect, you would give
27 them the opportunity to get into compliance?

28 MR. MILLAN: Absolutely, absolutely.

1 CHAIRMAN BURTON: Couple other questions.

2 You may familiar with this, but a year ago, over
3 a year ago, in the L.A. Times, they were talking about the labor
4 office being slow to act, and basically about missing statutory
5 deadlines for processing claims. There were not enough services
6 that the workers could understand what was going on. That even
7 when the cases were decided, a long time could drag on before
8 they got the wages. I guess this is your enforcement power.

9 There are problems in ag. and garment, but
10 there's also problems in construction, building service, which
11 would be janitors and security guards, as well as service
12 personnel in the craft industries, according to the Department
13 of Labor.

14 So, basically, how are you going to deal with the
15 fact that they've been a little lax in recent years? What do
16 you need? More money, less money? More people, less people?
17 Just somebody on top who wants to get the job done? What are
18 you going to do?

19 MR. MILLAN: Let me tell you what things I have
20 done, what things are being proposed.

21 When I was appointed in July of '98, I
22 immediately expressed an interest in opening up the Los Angeles
23 district office. I think that was one of the major complaints
24 in that article, that the residents of the City of Los Angeles
25 did not have a forum to bring their wage claims, and they had to
26 go Van Nuys or Long Beach, our other two offices. So, I opened
27 up the Los Angeles office to accept wage claims and process them
28 there.

1 As I alluded to earlier, we have embarked on a
2 very ambitious educational outreach program by having these
3 materials provided in the language of the individuals,
4 non-English speaking individuals.

5 And just in closing, I want to say that the
6 Governor has proposed in his budget an augmentation for our
7 field enforcement programs, and I strongly support that
8 augmentation, and I would hope that all of you would as well.

9 CHAIRMAN BURTON: Senator Hughes.

10 SENATOR HUGHES: Do you think by the budget
11 augmentation that that would substantially help you to improve
12 the enforcement and the effectiveness of this Division?

13 MR. MILLAN: Absolutely, I think that that would
14 be the case, because, as you're probably aware, Senator Hughes,
15 having a presence in the workplace and being able to respond to
16 complaints within a short timeframe, once the complaints are
17 filed, really helps us to identify problems, or even prevent
18 other problems, and just reinforces the confidence that the
19 employees have in an enforcement program.

20 SENATOR HUGHES: Now, I understand Leg. Analyst
21 has criticized your Division, stating that most of the penalties
22 that were assessed were never collected.

23 Are you doing anything about the collection, or
24 do you think that we should be further pursuing that?

25 MR. MILLAN: What we've done is, actually it was
26 at the suggestion of Senator Polanco some years ago. We turned
27 over all of the collections for penalties over to an agency that
28 is better equipped, in terms of resources and time and ability,

1 to affect collections on debts owed to the state.

2 SENATOR HUGHES: What agency is that?

3 MR. MILLAN: The Franchise Tax Board. Franchise
4 Tax Board now handles all of our collections.

5 SENATOR HUGHES: As of when?

6 MR. MILLAN: As of 1996.

7 And any other way that we can help them, and help
8 improve their ability to affect these collections, we will do
9 so.

10 But we do deal with a population, as Senator
11 Costa alluded to in his opening statement to present me, we do
12 deal with a population of employers who are in violation of many
13 laws. And therefore, they're quite adept at trying to hide, or
14 they have no assets in many cases. Open up a shop one day,
15 close it down the next. There are no assets to attach
16 immediately.

17 SENATOR HUGHES: This is a self-perception
18 question. Do you believe that you are, in fact, a forceful
19 advocate for the staffing needs of your Division?

20 MR. MILLAN: Absolutely, absolutely.

21 SENATOR HUGHES: And you're doing all that you
22 can possibly do under the circumstances?

23 MR. MILLAN: Oh, yes, yes.

24 SENATOR HUGHES: You were the Deputy Labor
25 Commissioner in '86-'87. Can you give us some idea why your
26 Division's enforcement and collection powers were not utilized
27 in a specific case? There was a James Sanzaro, which case had
28 been brought to your attention by the Rules Committee staff.

1 Do you know how long the records on
2 Mr. Sanzaro's case have been missing or absent from the files?

3 MR. MILLAN: We have a deadline of five years in
4 our records retention program. So, we looked -- actually, when
5 this situation came to our attention this year, we looked for
6 those records, and those records have been purged because of the
7 records retention.

8 So, what I've been able to piece together, with
9 the assistance of Rodger Dillon, and the Rules Committee, and
10 various individuals from my Southern California offices have
11 been in contact with Mr. Sanzaro himself. We've been able to
12 get the documents together.

13 SENATOR HUGHES: What recourse do you think he
14 has, since you're still looking and searching for his documents?

15 MR. MILLAN: Based on my technical experience in
16 working these types of wage claims, I can tell you, I can't hold
17 out a lot of hope in resolving the claim, because the statute of
18 limitations, unfortunately, has long since expired. Plus, the
19 legal entity that he's filed a claim against changed. There's a
20 new legal entity now.

21 But, I don't want to foreclose any possibility,
22 and so I would like to talk with Mr. Sanzaro and have him talk
23 with our legal staff to see what, if anything, we can do to see
24 that he gets the money that we determined was owed to him.

25 SENATOR HUGHES: I'm very proud of your public
26 acknowledgement that you are attempting to continue to help him,
27 because it's a very difficult situation that he finds himself
28 in.

1 MR. MILLAN: Absolutely.

2 SENATOR HUGHES: What is your position on the
3 retention of the existing method of determining the prevailing
4 wages?

5 MR. MILLAN: Well, I am in the position of being
6 the Chief labor law enforcement officer of the State. So, I
7 don't really have a position on what the law should be, or could
8 be, or would be. I just enforce what the law is.

9 And currently, that methodology is the modal rate
10 of determining prevailing wages.

11 I do believe in statutory rights of workers who
12 work on public works projects to be paid a prevailing wage rate,
13 and that's what I am to enforce. I enforce what the existing
14 law is.

15 SENATOR HUGHES: What action do you intend to
16 take to increase the enforcement of the existing prevailing
17 wages in public works construction?

18 MR. MILLAN: I have completely changed over the
19 public works enforcement program by changing over to the team
20 concept of enforcement, whereby we have investigators working
21 along side the payroll auditors, attorneys and clerical help.
22 Altogether, by sharing resources and sharing attention to these
23 cases, I think the quality of our cases can be vastly improved,
24 and has been, and we turn these cases around in a quicker amount
25 of time.

26 SENATOR HUGHES: The Sacramento Bee reported that
27 you had ruled that the laws prohibiting employee discrimination
28 based on sexual orientation applied to nonprofit organizations,

1 such as Boy Scouts, fraternal organizations, labor unions,
2 homeowner associations, et cetera, et cetera.

3 Could you explain your ruling relating to
4 employer discrimination on sexual orientation?

5 MR. MILLAN: That actually required a reading of
6 the relevant Labor Code Section 1102.1 that was passed by this
7 Legislature and signed by the Governor, as you well know.
8 AB 2601 was the relevant law.

9 That law specifically exempted a certain class of
10 employers. That class of employers is defined in that Labor
11 Code section as being employers of five or fewer employees, and
12 religious employers, whether they're organized as a nonprofit or
13 for-profit, associations or organizations.

14 I didn't think -- and actually I had relied on
15 previous legal counsel opinion, to say that the law extended the
16 prohibition to nonprofit organizations some time back when I was
17 Assistant Labor Commissioner, based on legal counsel telling me
18 that.

19 But we had a case that I became aware of after my
20 appointment from an employee of the San Francisco Employment Law
21 Center who was alleging that that reading of the statute clearly
22 went beyond what the Legislature intended. And that actually
23 the Legislature intended to exempt specifically religious
24 nonprofit or for-profit organizations, and no other type of
25 organization. Unless you have a religious component, or
26 quasi-religious component, you really could not fit under that
27 category of exemption.

28 So, after discussing it again with legal counsel,

1 both internally and externally, and with the Attorney General's
2 Office, we came to the conclusion that, in fact, the Legislature
3 intended to exempt this class of employers, religious
4 organizations, nonprofits or for-profit, and no other type of
5 employer.

6 That's why you had the legislative attempt
7 recently by Assemblyman Baldwin to extend the statute to include
8 nonprofit, non-religious employers.

9 SENATOR HUGHES: Thank you.

10 MR. MILLAN: You're welcome, Senator Hughes.

11 CHAIRMAN BURTON: Senator Knight.

12 SENATOR KNIGHT: Thank you.

13 In looking over your resume, I can understand
14 maybe how you went to Brattleboro, but how in the world did you
15 spend two winters in Vermont?

16 MR. MILLAN: Actually, it was a good experience.

17 SENATOR KNIGHT: I'll bet.

18 MR. MILLAN: One I don't want to repeat any time
19 soon.

20 SENATOR KNIGHT: Thank you.

21 SENATOR LEWIS: Move the confirmation.

22 CHAIRMAN BURTON: Any opposition? I know there's
23 some support. Why don't the supporters identify themselves for
24 the record.

25 MR. CURTIN: Mr. Chairman and Members, Danny
26 Curtin, California State Council of Carpenters.

27 We support the nomination. Thank you.

28 MR. CENTER: Mr. Chairman, Chuck Center of the

1 California State Council of Laborers.

2 We also support the nomination.

3 Mr. Chairman and Members of the distinguished
4 Committee, David Lanham, Southern California Labor Management
5 Operating Engineers Contract Compliance, support the nomination.

6 MR. SANZARO: Mr. Chairman, James Sanzaro that
7 had the problem that Senator Hughes talked about. And it's
8 being worked for the first time in a lot of years.

9 I certainly support and I represent the SEIU
10 Parimutuel Clerks.

11 MR. TCHAKALIAN: Mr. Chairman, my name is Ed
12 Tchakalian. I work with the United Garment Workers Union.

13 And I personally know Mr. Jose Millan for many
14 years. I support him.

15 MR. REED: Good afternoon, Mr. Chairman. My
16 name is Bob Reed. I'm a sewing contractor. My company is
17 Stitches, Incorporated, in the Los Angeles area.

18 I'm here on behalf of myself and my association,
19 which is the Garment Contractors Association of Southern
20 California, and also on behalf of the ACAC, which is the Apparel
21 Contractors Alliance in California, which is comprised of --
22 I'm sorry for all the acronyms -- the ACGCA, the
23 American-Chinese Garment Contractors Association in Los Angeles,
24 the KGIA, the Korean Garment Industry Association. And all
25 those are from the Los Angeles area. I'm also representing
26 NCCGCA, the Northern California Chinese Garment Contractors
27 Association.

28 Together we represent approximately 1200 garment

1 contractors, employing approximately 75,000 employees who work
2 in registered compliant and legitimate factories. Statewide,
3 the industry employs about 175,000 workers in 4500 registered
4 factories.

5 On behalf of my company and my association, all
6 four members of the Association of the ACAC, I'm here to give
7 enthusiastic and unequivocal support for the confirmation of
8 Mr. Millan as the next State Labor Commissioner.

9 Thank you.

10 SENATOR AYALA: Do you represent all these folks?

11 MR. REED: Today I do, yes, sir.

12 MR. CREMINS: Mr. President, Jim Cremins, just
13 representing the Operating Engineers in full support.

14 CHAIRMAN BURTON: Opposition?

15 SENATOR LEWIS: Move.

16 CHAIRMAN BURTON: Moved by Senator Lewis.

17 Call the roll.

18 SECRETARY WEBB: Senator Ayala.

19 SENATOR AYALA: Aye.

20 SECRETARY WEBB: Ayala Aye.

21 SECRETARY WEBB: Senator Hughes.

22 SENATOR HUGHES: Aye.

23 SECRETARY WEBB: Hughes Aye. Senator Knight.

24 SENATOR KNIGHT: Aye.

25 SECRETARY WEBB: Knight Aye. Senator Lewis.

26 SENATOR LEWIS: Aye.

27 SECRETARY WEBB: Lewis Aye. Senator Burton.

28 CHAIRMAN BURTON: Aye.

1 SECRETARY WEBB: Burton Aye. Five to zero.

2 CHAIRMAN BURTON: Congratulations.

3 MR. MILLAN: Thank you very much.

4 CHAIRMAN BURTON: Why don't you let Senator
5 Polanco know that you're working with the garment people and
6 other the people.

7 MR. MILLAN: To bring them into compliance.

8 CHAIRMAN BURTON: I understand. In other words,
9 you're going to give them time to get into compliance. You're
10 not going to stiff them.

11 MR. MILLAN: Absolutely not.

12 CHAIRMAN BURTON: Sounds good to me.

13 Charles Raysbrook, Director of Boating and
14 Waterways.

15 MR. RAYSBROOK: Good afternoon, Mr. Chairman,
16 Members, staff.

17 I'm Chuck Raysbrook, Director of Boating and
18 Waterways.

19 Thank you for the opportunity to make a few
20 remarks about my qualifications. I must say that when asked by
21 the Governor to take this position in May of last year, it
22 didn't take me too long to decide it was something I really
23 wanted to do.

24 Even before I came to state service in May of
25 1992, I feel that I had some qualifications and experience that
26 would commend me for this particular job.

27 I am the son of a Navy Captain, and his father
28 before him was a Captain in the Merchant Marine. Then I was a

1 professional Naval officer, and during my 23 years of Naval
2 service, I worked in a variety of positions, all of which had to
3 do with the execution of programs, apart from those periods when
4 I was undergoing formal training. I did have some considerable
5 responsibilities in management positions.

6 In 1992, I came to work for the Office of Oil
7 Spill Prevention and Response. And they were then in the
8 process of becoming established and establishing throughout the
9 state, in the ports and harbors, harbor safety committees
10 pursuant to legislation that was passed in 1991, California's
11 Oil Spill Prevention and Response Act.

12 As those committees were being formed, I was
13 participating in that process and got to work with those
14 committees. All of them were charged with developing harbor
15 safety plans. And the committees themselves were comprised of
16 various members of the maritime nautical communities in the
17 ports.

18 One component of those harbor safety plans was
19 recreational boating. So, I grew to know the recreational
20 boaters through that process, and we also had some considerable
21 interrelationship with Coast Guard.

22 While I was in the Office of Oil Spill Prevention
23 and Response, I did get to work in executing or developing, and
24 then finally having signed, three Memoranda of Understanding
25 with the United States Coast Guard.

26 So, over the five years that I was in state
27 service, I did develop some relationships which I think
28 qualified me and prepared me for my present position, that's

1 representing over 3 million recreational boaters of the State of
2 California.

3 I think that I've had gratifying time in just the
4 short year that I've been there. I've developed some good
5 working relationships, parlaying upon my prior background and
6 experience.

7 The State of California has been very good to me
8 and my family, and I look forward to continuing to serve the
9 State of California, paying back something that's been offered
10 to me.

11 May I respond to questions?

12 CHAIRMAN BURTON: One of the problems that, I
13 guess, is facing you is the MTBE problem on boats. Then that
14 stuff gets into the lakes, and it gets into the water, and then
15 people get into the hospital, and some into the ground.

16 What are you doing about that problem? MTBE is
17 something that everybody looked at as effects the air to make
18 the air cleaner, but didn't look at the effect of what it's
19 doing to the water supply.

20 MR. RAYSBROOK: Yes, sir.

21 The problem is complex. As Debra Bowen pointed
22 out in her committee hearing a few weeks ago, it does require
23 careful consideration by those that have to deal with the
24 issue.

25 The Department is satisfied that the cognizant
26 state agencies that are responsible for human health standards
27 and for water and air quality are, in fact, dealing with that
28 problem. There are studies that are under way now.

1 CHAIRMAN BURTON: Nothing you can do or should
2 do?

3 MR. RAYSBROOK: Oh, yes, sir.

4 CHAIRMAN BURTON: What are you doing?

5 MR. RAYSBROOK: Yes, sir.

6 When I was working at Oil Spill Prevention and
7 Response, there was one program there that I'm now anxious to
8 synthesize with the Department of Boating and Waterways program,
9 and that is Marina Outreach program.

10 It has to do basically with marine fueling
11 facilities in the marine environment, addressing the problem of
12 spills.

13 That is one thing that we can do, is take that
14 program and adapt it to inland marinas and recreational boating
15 marinas.

16 CHAIRMAN BURTON: As I understand, this ain't a
17 spill. It's not like you can look at a spill, you can see a
18 spill.

19 SENATOR KNIGHT: Two cycle engines that use oil
20 and gas. Part of it spills out.

21 MR. RAYSBROOK: That's correct.

22 CHAIRMAN BURTON: What are you going to do?

23 MR. RAYSBROOK: When it began, as attention being
24 focused on MTBE as an issue, I think, has expanded to
25 incorporate the two-cycle engines. By their design, they do
26 discharge pollutants into the atmosphere.

27 A great deal of energy is being expended now by
28 the marine manufacturers.

1 CHAIRMAN BURTON: What are you going to do?

2 MR. RAYSBROOK: Well, sir, we're looking from a
3 policy standpoint. We're looking at the granting of loans. And
4 where we affiliate with or get associated with communities or
5 water districts that would want recreational boating facilities,
6 we're examining how those facilities would then accommodate
7 two-stroke engines.

8 In some instances, water districts and those
9 responsible for water management have taken steps. And we don't
10 presume that we can intercede or get involved in their
11 independent decision-making process, which has been affirmed in
12 an amicus brief by the Attorney General's Office, that local
13 communities and water managers do have responsibility for
14 setting standards.

15 CHAIRMAN BURTON: In other words, you're going
16 catch to other people?

17 MR. RAYSBROOK: No, sir. At the moment, we don't
18 have a position on the bill.

19 CHAIRMAN BURTON: If you thought what was going
20 on was bad, what could you do to stop it, modify it, or
21 whatever, on your own hook?

22 MR. RAYSBROOK: It is important that we work with
23 other agencies, and we're doing that now.

24 CHAIRMAN BURTON: What could you do on your own
25 hook? Could you say no two-stroke engines? More two stroke
26 engines? More eight-stroke engines? Only sail boats? What can
27 you say?

28 MR. RAYSBROOK: No, sir, we don't have that

1 authority to regulate to that degree.

2 We have information outreach. We can certainly
3 apprise people --

4 CHAIRMAN BURTON: You have no regulatory
5 authority?

6 MR. RAYSBROOK: No, sir. We cannot restrict
7 boating per se. In fact, our mission is precisely the opposite.
8 It's to encourage recreational boating and to develop
9 infrastructure in support of recreational boating.

10 So, it's a difficult position for the Department
11 to be in. We do recognize that there are some very legitimate
12 concerns. We also recognize that there are over 500,000 boat
13 owners in California that could be affected by legislation that
14 would prohibit the use of those engines. It is a concern, and
15 it's a complicated problem.

16 CHAIRMAN BURTON: There's probably a whole bunch
17 of people that can be restricted from doing a whole lot of stuff
18 if it's found to be harmful.

19 What is your position on the Bowen bill? Watch?
20 Don't watch? Do nothing?

21 MR. RAYSBROOK: Yes, sir. Watch very closely and
22 work with the other agencies that are involved in developing
23 standards.

24 CHAIRMAN BURTON: Anybody else.

25 SENATOR KNIGHT: Move.

26 CHAIRMAN BURTON: I guess it's a problem, but
27 you're not the guys that deal with it.

28 SENATOR KNIGHT: I won't hold it against him that

1 he's Navy.

2 CHAIRMAN BURTON: How about the fact that he was
3 in the embassy in Pretoria.

4 SENATOR KNIGHT: Yes, well.

5 CHAIRMAN BURTON: Defense Intelligence. Is that
6 an oxymoron? No, Military Intelligence.

7 All right, so you've basically got nothing to do
8 with that stuff. You can kind of, and you think it's a problem,
9 and you're hoping that somebody else will solve it for you.

10 MR. RAYSBROOK: Well, we are constrained in what
11 we can do, sir.

12 CHAIRMAN BURTON: I understand that.

13 Okay, moved by Senator Knight. Call the roll.

14 Any support, any opposition.

15 MR. DAVEY: Thank you, Mr. Chairman.

16 Scott Davey, Los Angeles County Lifeguard
17 Association, representing 700 lifeguards down in Los Angeles.

18 We want to express our strong support for
19 Mr. Raysbrook. Mr. Raysbrook's concern -- and you talked about
20 safety -- his concern for safety is very important to our
21 organization. And his willingness to work with local agencies
22 like ours is very important for boating safety.

23 CHAIRMAN BURTON: Thank you.

24 Any other support?

25 Moved by Senator Knight. Call the roll.

26 SECRETARY WEBB: Senator Ayala.

27 SENATOR AYALA: Aye.

28 SECRETARY WEBB: Ayala Aye.

1 SECRETARY WEBB: Senator Hughes.

2 SENATOR HUGHES: Aye.

3 SECRETARY WEBB: Hughes Aye. Senator Knight.

4 SENATOR KNIGHT: Aye.

5 SECRETARY WEBB: Knight Aye. Senator Lewis.

6 Senator Burton.

7 CHAIRMAN BURTON: Aye. Keep the roll open.

8 [Thereafter, SENATOR LEWIS added

9 his Aye vote, making the final

10 vote 5-0 for confirmation.]

11 CHAIRMAN BURTON: Richard Remy, head of EDD.

12 Do you want to briefly --

13 MR. REMY: Fine, Senator.

14 Thank you for the opportunity of being here. I'm

15 Ray Remy, the nominee for the position of Director of the
16 Employment Development Department. I've served as the nominee
17 in that capacity since September of last year.

18 I, like Cliff Allenby, look forward to an
19 opportunity of serving the remainder of this year, and then
20 following other pursuits in the coming next year.

21 My background includes service for seven years
22 with the League of California Cities, where I worked with local
23 government. Enjoyed that experience. I spent some time with
24 area-wide planning organizations in Southern California.

25 I then had the opportunity of being Chief of
26 Staff for Tom Bradley, the Mayor of Los Angeles, and served as
27 Deputy Mayor for an eight-year period. Then spent twelve years
28 as the President of the Los Angeles Area Chamber of Commerce,

1 where I worked with the private sector.

2 I also have in my background a tenure at the
3 Jefferson Grammar School in the Sunset District in San
4 Francisco.

5 CHAIRMAN BURTON: You did?

6 MR. REMY: I did indeed.

7 CHAIRMAN BURTON: Who was the principal?

8 MR. REMY: I don't remember the principal. I was
9 only in the third grade.

10 CHAIRMAN BURTON: Miss Burk.

11 Who was Vice Principal? Miss Peabody.

12 Do you know the school hymn?

13 Hail, hail,

14 To thee,

15 Oh, hail.

16 To Jefferson thrice hail.

17 In white our colors

18 Bright to see

19 A sign of strength

20 And liberty.

21 MR. REMY: I was trying to figure our --

22 CHAIRMAN BURTON: I was more impressed with the
23 Student Body President of San Rafael High, but Jefferson Grammar
24 School, I have no questions.

25 I do have one question, though.

26 MR. REMY: Yes, Senator.

27 CHAIRMAN BURTON: You guys have Project 2000, or
28 whatever it is, the computer.

1 Are you going to be up to date and ready for
2 that?

3 MR. REMY: We have substantial resources that we
4 put into it. It's affectionately known as Y2K, or the year 2000
5 compliance. We have several million lines of data that have to
6 be coded. We've got substantial funds that have come from the
7 federal government, Department of Labor.

8 CHAIRMAN BURTON: You're on target?

9 MR. REMY: On a weekly basis, and I am advised
10 each month that we're meeting all the milestones for being able
11 to meet the Y2K requirement.

12 CHAIRMAN BURTON: Where did you live?

13 MR. REMY: In which place?

14 CHAIRMAN BURTON: Jefferson.

15 MR. REMY: At 23rd and Judah.

16 CHAIRMAN BURTON: By the lumber yard.

17 MR. REMY: Well, wasn't that much lumber there.
18 We had the streetcars going one way.

19 CHAIRMAN BURTON: But there was a lumber yard,
20 and an alley.

21 I was a year ahead of you.

22 MR. REMY: More than that, I think. When did you
23 go to St. Anne's?

24 CHAIRMAN BURTON: St. Anne's in the fourth grade,
25 '41-'42.

26 The guy's got the book on me.

27 MR. REMY: That's 'cause we ran into each other
28 at the airport.

1 CHAIRMAN BURTON: That's right. In fact, I told
2 you I saw the nun, Sister Mary Damien. She looked great. I
3 must have been nine when she was my teacher.

4 SENATOR HUGHES: What is this, the Old Boys Club?

5 CHAIRMAN BURTON: Nothing wrong with that.
6 Sunset guys. Colonial Creamery, you got it.

7 SENATOR KNIGHT: Any opposition? Move it.

8 CHAIRMAN BURTON: Senator Hughes.

9 SENATOR HUGHES: How are you doing?

10 MR. REMY: Just fine, Senator.

11 SENATOR HUGHES: I wanted to ask you, what do you
12 think the role of EDD should be in the implementation of welfare
13 reform in our state? Just so we get it on the record.

14 MR. REMY: I have been pleasantly surprised by
15 what I've seen in the range of cooperation.

16 If I take probably the most difficult county, and
17 that's the county from which you come and in which I have
18 served, the eight private industry councils have worked together
19 in this project better than they have worked together on
20 anything. The County Welfare Director, Lynn Baird, I think, has
21 done an extraordinary job, and we are very, very close, I think,
22 to getting the final approval on the federal plan, which we will
23 then be able to release \$160 million to the local level to
24 assist in the process.

25 More importantly, I think, I've been encouraged
26 by the commitment I've seen in the private sector. They really
27 do believe that they have a responsibility of developing the
28 sort of long-term employment in the private sector for the

1 long-term welfare recipients.

2 I would not say it's a perfect program, but the
3 level of cooperation is far better than I would have expected
4 coming to this job. And we will continue to work on it.

5 SENATOR HUGHES: Do you think the maximum weekly
6 SDI benefit of \$333 is adequate for an injured California worker
7 and his or her family? I mean, how do people live on that
8 little bit of money?

9 MR. REMY: The question of the level of the SDI,
10 and for that matter, there's also questions on UI, is one that I
11 think has to be analyzed in terms of the overall cost of living,
12 as well as the impact on the private sector.

13 The SDI is paid for by the employee, so that's a
14 fund they themselves put into.

15 Trying to equate where we are in terms of that
16 benefit, and where it works with workers comp. is one that we
17 are constantly looking at in terms of developing our
18 recommendations for the Governor on that position.

19 SENATOR HUGHES: The Governor, in Executive
20 Order, requires EDD to screen all the applicants for SDI
21 benefits for citizenship. Since the state disability is 100
22 percent worker paid insurance benefit, do you believe it's fair
23 to require a worker to make insurance premium payments, and then
24 deny the same person access to insurance benefits?

25 How do you reconcile that?

26 MR. REMY: The question -- this is, of course,
27 tied to the federal legislation, the Welfare to Work, or
28 Personal Responsibility legislation, as to the determination of

1 what is a state benefit.

2 The question then revolves around if someone here
3 is working but is not legally in this country, to what extent is
4 there a claim that they can make upon a program, which, if they
5 were identified as not legally being in the country, they would
6 not be entitled to.

7 So, when one puts forth a request for a benefit,
8 and then at the same time discloses that they're not legally
9 here, it raises the question on what basis should they have been
10 employed in the first instance.

11 That's the legal question that will revolve
12 around it as we move forward, ultimately implementing that
13 program, however it's defined federally and state.

14 SENATOR HUGHES: On to another problem. EDD is
15 in the process of introducing statewide telephone filing for UI
16 and SDI benefits.

17 Since not all the applicants do, in fact, have
18 access to telephones, EDD has plans to dedicate at least one
19 phone in each of the job services sites for claimants who need
20 access to the telephone claim filing system.

21 How will the claimant be made aware of this
22 service? Because, I had a problem in a portion of my district
23 where they closed an office, and they indicated that the phone
24 contact would be available.

25 And how do you plan on advertising so the people
26 who don't have the phones know where the phones can be utilized
27 by them?

28 MR. REMY: I appreciate the question, Senator,

1 because it gets to the heart of a whole set of questions.

2 As we move forward to better communication,
3 better use of technology, in meeting the needs of a population
4 that's now 32 million, and soon to grow to 50-odd million in the
5 state near 2025, we have to have the capability of using that
6 technology, but we still have to have an understanding of an
7 outreach to communities in both urban and rural areas.

8 Ways in which we have to do a better job, I
9 think, in getting information out to our communities, we're
10 going to see more and more of the one-stop coordinated job
11 centers, but we need to make sure that people know they have
12 access to it. We need to work more with our welfare departments
13 to make sure that we can use them as accessibility points for
14 people who may not have access in their own homes to what we
15 take for granted capability.

16 SENATOR HUGHES: But then are you going to
17 appoint some field staff to be available to help people who need
18 assistance?

19 You know, people are fearful of using telephones
20 for anything. Let me share with you an example.

21 I called our Arrowhead Water distributor the
22 other day for my mother. And then it says, "If you would have
23 your number, your account number, press two; if you don't have
24 your account number, press three."

25 Is it going to be one of those kind of things
26 that drive you crazy, and you have to press about six or seven
27 numbers before you get an answer? Or are you going to have
28 someone there to really allay people's apprehension for using

1 the phones?

2 These automated things drive most people crazy.

3 MR. REMY: I've heard that, and we continue to
4 hear it, not only in terms of our service, but in terms of the
5 general private sector service.

6 I've been very interested in trying to see if we
7 can do more in the community outreach side to identify people
8 who will be available, not to deal with the individual claims,
9 but to deal with the community relations information standards.

10 And obviously, the one-stop approach is one area
11 of that, but I think we have to do it within our own EDD
12 workforce.

13 We've got a pilot program that we've worked
14 together a little with Senator Thompson in Eureka to see if we
15 can do a pilot program there about community outreach to answer
16 questions for DI, UI, and other EDD services.

17 If it works, we're going to probably try and
18 expand that to other parts of the state to get that community
19 presence, at the same time, we're going towards automation.

20 CHAIRMAN BURTON: Senator Ayala.

21 SENATOR AYALA: Mr. Remy, I could call you Ray,
22 but I'm not from San Francisco, so I'm going to call you Mr.
23 Remy.

24 I want to follow up on Senator Hughes' question
25 about benefits that are not paid to undocumented workers who pay
26 into the system. I don't think they're entitled to the benefit,
27 but the point is, you take money from these people.

28 Do you reimburse them with interest? I know I

1 would expect you to.

2 MR. REMY: That's a question that I think the
3 legal staff is going to have to answer as to what is the
4 inherent liability of the state upon collecting dollars from an
5 employee who is not legally here.

6 CHAIRMAN BURTON: The question was, do you give
7 them the money back?

8 MR. REMY: That's it.

9 CHAIRMAN BURTON: You don't know if you do or not?

10 MR. REMY: I think the lawyers are going to have
11 to indicate --

12 CHAIRMAN BURTON: You'd know whether you give
13 them money back or not.

14 MR. REMY: As of now, if a person was here
15 illegally, they would not get their money back.

16 CHAIRMAN BURTON: Their money that they gave you?

17 MR. REMY: That's correct.

18 But I think that that will be subject to legal
19 challenge.

20 SENATOR AYALA: I think that common sense tells
21 you -- never mind this legal mumbo-jumbo -- you tax me for
22 something that I'm not going to get services from, that's
23 taxation without representation.

24 MR. REMY: I agree.

25 SENATOR AYALA: I agree, these people should not
26 be entitled to it, but why do you take their money?

27 What do you do with the employers, by the way?
28 Here's where we're going to get to a little bit of a problem.

1 They hire these people who know they're illegal here, yet, they
2 get away with murder. You penalize the people who are here
3 legally.

4 I think the employers ought to be given a good,
5 stiff fine because they're doing it intentionally, and they know
6 they can get away with it, because apparently the law supports
7 them.

8 I would like to see a little fairness involved
9 here. Don't get benefits, but you don't pay for them. Instead
10 of paying for something, and then you find out you're not
11 entitled to it, but you don't get your money back.

12 I think it's irresponsible as all get-out, to be
13 frank would you. And I don't care what the Democratic or
14 Republican administration does, it's wrong.

15 And let these employers gets away with murder,
16 because they're ones that cause the problem. They hire these
17 people, knowing they're Illegal. But we seem to forget about
18 those people who are there.

19 When the Department identifies an undocumented
20 worker, is that individual reported to the INS?

21 If they're found to be here illegally, what
22 happens to them?

23 MR. REMY: If somebody filed a claim, and they
24 were not legally here, then I think that information would be
25 made available, yes.

26 SENATOR AYALA: Again, going back to the employer
27 that causes the problem, I think that they should be dealt with,
28 too.

1 MR. REMY: I believe there are penalties to an
2 employer that has hired somebody illegally.

3 SENATOR AYALA: What are you doing about
4 that?

5 MR. REMY: That's not an enforcement action on
6 our part, but there is an enforcement action if you are
7 hiring --

8 SENATOR AYALA: Who's responsible for that?
9 Senator Hughes just talked about that question.

10 If we just talk about it, it's getting over our
11 heads, yet it continues to happen all the time.

12 MR. REMY: I believe that's an INS issue.

13 SENATOR AYALA: No, the hiring of these people.

14 MR. REMY: But indeed --

15 SENATOR AYALA: Hiring of these people, and
16 taking money for services they're not going to get is not an INS
17 problem. It's a federal problem, I guess, or a state
18 problem.

19 MR. REMY: Yes, it is, indeed. And it's federal
20 law.

21 CHAIRMAN BURTON: No, the point is, not federal
22 law.

23 The state's taking their money, but I think you
24 said that, I would imagine if somebody sued for the money, they
25 would, one, be able to get it back. But if it's called to your
26 attention that an undocumented filed, and they weren't a
27 citizen, that you'd then turn that information, I think, over to
28 our Labor Commissioner, somewhere, some how.

1 I think we even, at one time, we used to have
2 sanctions for hiring undocumented people. I think that's in
3 some of the things.

4 The question, back to the SDI rates, where the
5 Department opposed the Rosenthal bill, which I guess was because
6 the administration wanted you to, but the fund's almost a
7 billion dollars in the red.

8 The Governor gave an excuse for vetoing the bill,
9 that it would require a payroll tax increase, which is bogus.

10 MR. REMY: For SDI?

11 CHAIRMAN BURTON: Yes, that's what he said, which
12 is a bogus statement, for openers. And it would be imprudent
13 while the economy's recovering.

14 I mean, I guess it's just another indication that
15 the Governor wants to stick it to some working people, even
16 though it was their money that bought the insurance and the fund
17 was in the red.

18 So, wouldn't the Department support an increase
19 in disability insurance if there was a bill in this session?

20 MR. REMY: What we have said in terms of a
21 proposal for an SDI increase, because that is one that's paid by
22 the employee.

23 CHAIRMAN BURTON: We know about it. That's why
24 we're having this big debate.

25 MR. REMY: What I've said is that as we analyze
26 the bill, we would put information forth, both in terms of where
27 we stand in terms of this state, our economy, as well as the
28 information.

1 CHAIRMAN BURTON: How about the fact it's their
2 money, and it's sitting in the government's bank? What's there
3 to analyze? What it is in Tennessee or Mississippi?

4 MR. REMY: What you analyze is the extent of the
5 benefit, and how the system works, whether you need any changes
6 in the system at the same time that you increase level of SDI
7 benefit.

8 CHAIRMAN BURTON: What changes do you need in the
9 system? It's their money.

10 MR. REMY: It's also administered.

11 CHAIRMAN BURTON: No, it's their money.

12 MR. REMY: That's right. It's paid for by the
13 employee, and it's in the fund.

14 CHAIRMAN BURTON: Right. So, what changes do you
15 want in the system? They got to work 20 years before they get
16 it? It's their money.

17 Could you tell us how much we could reduce their
18 rate, as long as the surplus is there, and keep things the way
19 it is?

20 MR. REMY: The rate has been held stable for the
21 last --

22 CHAIRMAN BURTON: I understand that. I'm talking
23 about reducing it.

24 MR. REMY: If you reduce it much more, you will
25 begin to actually put the fund once again in the direction of
26 deficit.

27 CHAIRMAN BURTON: I mean, if you take a dollar
28 out of the fund, you're putting it in the direction of deficit.

1 MR. REMY: That's true, but right now, the fund
2 is right at about a balanced level.

3 CHAIRMAN BURTON: No, right now the fund is in
4 surplus close to a billion dollars.

5 MR. REMY: When I say a balanced level, the fund
6 is at a level in which the amount of money going in, and the
7 amount of money going out, is in about a balance.

8 CHAIRMAN BURTON: Right, and there's a surplus
9 sitting there besides.

10 MR. REMY: And there is a surplus in the fund;
11 that's correct.

12 CHAIRMAN BURTON: So, what would it take to
13 return that surplus? If we can't return it to the workers in a
14 benefit increase, what kind of cut would it be to return that to
15 them?

16 MR. REMY: Well, you either reduce the rate, and
17 I think it's at .6 now, as I recall. You reduce the rate, which
18 would mean the employer would be paying less into the fund --

19 CHAIRMAN BURTON: Employee.

20 MR. REMY: Excuse me, employee would pay less
21 into the fund, or you would increase the benefit.

22 I think the request has been to increase the
23 benefit rather than reduce the rate.

24 CHAIRMAN BURTON: I understand that, but the
25 Governor's seen fit not to increase the benefit.

26 So, when are you going to decide whether or not
27 you could support it? Or, is this, in fairness, a decision that
28 he's got to make, and not you?

1 MR. REMY: I think Governor is the one who makes
2 that decision. Hopefully, we would have input.

3 CHAIRMAN BURTON: Okay.

4 Any other questions?

5 SENATOR HUGHES: Move it.

6 CHAIRMAN BURTON: Any support? Any opposition?

7 SENATOR HUGHES: Move the appointment.

8 CHAIRMAN BURTON: Moved by Senators Hughes and
9 Knight.

10 Call the roll.

11 SECRETARY WEBB: Senator Ayala.

12 SENATOR AYALA: Aye.

13 SECRETARY WEBB: Ayala Aye.

14 SECRETARY WEBB: Senator Hughes.

15 SENATOR HUGHES: Aye.

16 SECRETARY WEBB: Hughes Aye. Senator Knight.

17 SENATOR KNIGHT: Aye.

18 SECRETARY WEBB: Knight Aye. Senator Lewis.

19 SENATOR LEWIS: Aye.

20 SECRETARY WEBB: Lewis Aye. Senator Burton.

21 CHAIRMAN BURTON: Aye.

22 SECRETARY WEBB: Burton Aye. Five to zero.

23 CHAIRMAN BURTON: Congratulations.

24 MR. REMY: Thank you very much, Senator.

25 [Thereupon this portion of the
26 Senate Rules Committee hearing was
27 terminated at approximately 3:00 P.M.]

28 --ooOoo--

CERTIFICATE OF SHORTHAND REPORTER

I, EVELYN J. MIZAK, a Shorthand Reporter of the State of California, do hereby certify:

That I am a disinterested person herein; that the foregoing transcript of the Senate Rules Committee hearing was reported verbatim in shorthand by me, Evelyn J. Mizak, and thereafter transcribed into typewriting.

I further certify that I am not of counsel or attorney for any of the parties to said hearing, nor in any way interested in the outcome of said hearing.

IN WITNESS WHEREOF, I have hereunto set my hand this 20th day of May, 1998.


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